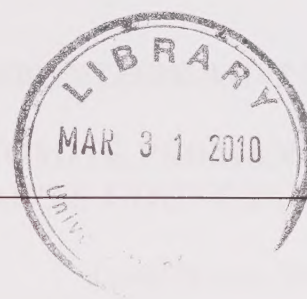




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Official Report of Debates (Hansard)

Monday 22 March 2010

Journal des débats (Hansard)

Lundi 22 mars 2010

Standing Committee on General Government

Energy Consumer
Protection Act, 2010

Comité permanent des affaires gouvernementales

Loi de 2010 sur la protection
des consommateurs d'énergie

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Monday 22 March 2010

Lundi 22 mars 2010

The committee met at 1400 in room 228.

SUBCOMMITTEE REPORT

The Vice-Chair (Ms. Helena Jaczek): We're now in session. This is the Standing Committee on General Government and we are assembled to discuss Bill 253, An Act to enact the Energy Consumer Protection Act, 2010 and to amend other Acts.

The first item of business is the report of the subcommittee.

Mr. Bill Mauro: Your subcommittee met on Tuesday, March 9, 2010, to consider the method of proceeding on Bill 235, An Act to enact the Energy Consumer Protection Act, 2010 and to amend other Acts, and recommends the following:

(1) That the committee meet in Toronto on Monday, March 22, 2010, and Wednesday, March 24, 2010, for the purpose of holding public hearings.

(2) That the committee clerk, with the authorization of the Chair, post information regarding public hearings in the Toronto Star and the French weekly, L'Express.

(3) That the committee clerk, with the authorization of the Chair, post information regarding public hearings on the Ontario parliamentary channel, the Legislative Assembly website and Canada NewsWire.

(4) That interested parties who wish to be considered to make an oral presentation contact the committee clerk by 12 noon on Wednesday, March 17, 2010.

(5) That groups and individuals be offered 10 minutes for their presentation. This time is to be scheduled in 15-minute increments to allow for questions from the committee.

(6) That, in the event all witnesses cannot be scheduled, the committee clerk provide the members of the subcommittee with a list of requests to appear by 1 p.m. on Wednesday, March 17, 2010.

(7) That the members of the subcommittee prioritize and return the list of requests to appear by 12 noon on Thursday, March 18, 2010, and that the committee clerk schedule witnesses based on those prioritized lists.

(8) That the deadline for written submissions be 5 p.m. on Wednesday, March 24, 2010.

(9) That the research officer provide the committee with a summary of presentations.

(10) That, for administrative purposes, proposed amendments be filed with the committee clerk by 12 noon on Tuesday, March 30, 2010.

(11) That the committee meet for the purpose of clause-by-clause consideration of the bill on Wednesday, March 31, 2010.

(12) That, in the event all witnesses can be scheduled on Monday, March 22, 2010, the committee shall meet for clause-by-clause consideration of the bill on Monday, March 29, 2010, and, for administrative purposes, proposed amendments should be filed with the committee clerk by 12 noon on Friday, March 26, 2010.

(13) That the committee clerk, in consultation with the Chair, be authorized prior to the adoption of the report of the subcommittee to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

The Vice-Chair (Ms. Helena Jaczek): Thank you very much. I just wanted to re-emphasize clause 12, that the committee will be meeting for clause-by-clause consideration of the bill on Monday, March 29, 2010. Therefore, any proposed amendments should be filed with the committee clerk by noon on Friday, March 26, 2010, just to bring that to everyone's attention.

Further debate?

All those in favour? Any opposed? None? That is carried.

ENERGY CONSUMER
PROTECTION ACT, 2010LOI DE 2010 SUR LA PROTECTION
DES CONSOMMATEURS D'ÉNERGIE

Consideration of Bill 235, An Act to enact the Energy Consumer Protection Act, 2010 and to amend other Acts / Projet de loi 235, Loi édictant la Loi de 2010 sur la protection des consommateurs d'énergie et modifiant d'autres lois.

UNION GAS

The Vice-Chair (Ms. Helena Jaczek): Starting with our first deputants, from Union Gas, we have Mel Ydreos—I hope I'm saying that right—

Mr. Mel Ydreos: Perfect.

The Vice-Chair (Ms. Helena Jaczek): —vice-president in marketing and customer care from Union Gas.

You have 10 minutes, as I'm sure you know. We will follow that, if there's time left over, with up to five minutes for questions.

Mr. Mel Ydreos: Thank you very much, Madam Vice-Chair, and thank you, committee members, for the opportunity to speak to you and share our views on Bill 235, the Energy Consumer Protection Act.

Union Gas is a major natural gas storage, transmission and distribution company based in Ontario, with nearly 100 years of experience and service to our customers. In fact, next year we will be celebrating our 100th year.

Our distribution business serves 1.3 million residential, commercial and industrial customers in more than 400 communities across northern, southwestern and eastern Ontario.

Our staff have been working in co-operation with the minister to address our issues with Bill 235, and we very much appreciate the open-door approach they have provided thus far.

Although we understand the direction and target of the legislation to be door-to-door energy contract sale practices, we want to highlight with you the specific sections of the act that are causing Union Gas some concern.

As the public and media focus of this legislation has been retailers, Union Gas was completely surprised to learn that certain sections of this bill were directly targeting some of our most fundamental business practices.

Under part IV of the legislation, "Regulations," section 34, cabinet is giving itself the power to create different classes of customers, consumers and persons in order to dictate what costs and policies will and will not be applied to each respective class of customer. These initiatives have the effect of making the Minister of Energy a rate-maker for energy costs in Ontario.

The application of costs, related policies and the possible creation of classes of customers has always been the responsibility of the Ontario Energy Board, Ontario's independent energy market regulator. We firmly believe that these powers should remain the responsibility of the independent regulator, the OEB.

From our perspective, we believe that these new powers could produce some unintended consequences for government. Once one class of customers is created, what is to keep other interest groups from demanding similar government treatment—northerners, seniors, farmers, rural residents etc.? This creates a troubling precedent where the Minister of Energy would have the power to determine costs and rates for energy consumers, not the Ontario Energy Board.

We understand that the initial focus of this effort comes from attempting to drive an initiative to better serve low-income customers and provide special treatment and exemptions with regard to their energy costs. However, this effort was already being undertaken by the proper authority, the independent Ontario Energy Board, just last year, before it was abruptly cancelled by a previous minister.

That being said, Union Gas is not a social agency. We distribute, transmit and store natural gas while helping

our customers to use this valuable resource wisely. That is what we do well; that is what our investors signed up for. It is this business model that has driven more than \$1 billion of investment and significant job creation over the last four years in this province, and it is the model that will work to drive the next \$1 billion in investment and job creation. That is why we leave the social engineering to the experts; that is why we are donating \$1.8 million per year to the United Way winter warmth program over the next three years. It is the United Way that best monitors and understands the needs of low-income consumers. Social programming is best left to governments and social agencies, not shareholder-owned gas distributors. It is simply not our skill set.

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We feel strongly that the low-income customer exercise at the Ontario Energy Board should be resumed. That is where it belongs: removed from direct political influence and undertaken in a transparent and inclusive way to all key stakeholders.

Under part V of Bill 235, "Consequential Amendments to Other Acts," section 42 of the Ontario Energy Board Act is amended to include ministerial regulation-making powers over our customer care practices: security deposits, disconnections and the presentation of our invoice. To date, no one in the ministry, government or anyone else, for that matter, has presented a rational argument for why these powers over our business are necessary. We see no requirement for their existence and the resulting intervention in our well-run business.

Regular customer surveys and industry benchmarking efforts prove over and over that our approach to dealing with customers is leading-edge in North America. Creating and building win-win relationships is one of our key stated organizational values. We have always prided ourselves on our ability to work with each and every customer on an individual and unique basis. We work with any customer who is willing to work with us in making alternative payment arrangements. We demonstrate empathy and flexibility with each customer, as we find this approach to be of enormous value to both our business and our customers. In fact, just last year we increased the number of customer special payment arrangements from 60,000 to 80,000. Customers can now also make payment arrangements electronically through our leading-edge self-serve option, offered through the My Account tool, without having to speak to anyone.

We understood that economic stress demanded some significant flexibility on our part last year. If government legislation had been in place, it is unlikely that we would have been able to make such an accommodation. We would have been forced to follow the rigid rule of the law and paint all customers with the same brush.

In the spirit of the Premier's Open Ontario and open-for-business focus, we have respectfully requested that initiatives surrounding our customer care policies be removed from the legislation. Leaving them in place will only serve to increase investment climate uncertainty and serve as a cloud over our relationship with our customers.

I respectfully submit to you that natural gas customers and the health of our sector would be best served by removing these measures as they pertain to the Union Gas distribution business. If you feel action needs to be taken on these and other issues surrounding our fundamental business interaction with our customers, we would again ask for these to be dealt with by the Ontario Energy Board, not the Ministry of Energy or the minister's office.

Our positions on security deposits, shut-offs and control of our invoice are as follows: Security deposits are only necessary if a customer has poor credit or a delinquency history. Even then, they are refundable with interest after just one year of satisfactory payment.

Shut-offs are our very last option when dealing with delinquent accounts. Without the threat of disconnection, customers don't pay and arrears grow out of control. Their subsequent ability to pay diminishes over time.

Our bill is private property and a shareholder-owned asset. It is the primary vehicle of communication with our 1.3 million customers. Over the years, we have invested time and effort on the presentation of our invoice and market research to make it what it is today. Our bill represents almost 100 years of interaction with our customers. We have always demonstrated flexibility on communicating issues of importance to the regulator and the government, and we will continue to do so.

Bill 235 states that the Minister of Energy will have control over our invoice and the wording within it. The invoice is a shareholder-owned asset and we will ensure that it remains so.

In closing, our recommendations are as follows:

—Any and all powers contained within Bill 235 pertaining to gas distribution, security deposits, shut-offs and invoices should be removed or, if preferred, referred to the Ontario Energy Board for their consideration.

—Any and all powers pertaining to the classification and separation of gas distribution customer classes should be removed from the legislation along with the power to assign or exempt certain costs from each class of customer as classified by the minister. This is a form of rate-making, and that should remain firmly in the hands of the OEB.

I would like to thank you for your time and attention to me and to Union Gas today. Once again, we appreciate the co-operative tone that Minister Duguid and his ministry have brought to the energy portfolio. We look forward to continuing our work with all members of the Ontario Legislature to help ensure that the needs of Ontario's energy consumers are addressed for years to come. We are most proud of the outstanding relationship we have with all MPPs and their staff.

Again, I thank you, Madam Vice-Chair. I'm now happy to take any and all questions from the honourable members of the committee in the order you see fit.

The Vice-Chair (Ms. Helena Jaczek): Thank you very much. You have left just about five minutes for questions, starting with Mr. Yakabuski, the official opposition.

Mr. John Yakabuski: Thank you very much, Mel, for joining us today. It's always good to see you.

It would appear that the ministry and the Minister of Energy would like to see the OEB gutted completely. It looks like they want to run the whole show, according to your deputation here. It would bring into question as to whether or not they're actually interested in seeing the thing work or just have the minister control it.

I have another question: Because they're enveloping themselves into your billing and everything else, they're seeming to have significant control over your business practices where there's not a demonstrated problem. We understand the issues that have generated over the years related to door-to-door, but I have a question also, because we've seen this interference. We're seeing it now. Now they want to make utilities and gas companies bill collectors. We know about the \$53-million back-door tax on electricity. I wanted to ask you: Have you or your company engaged in any discussion with the Ministry of Energy regarding this tax fee being applied to your utilities as well, the gas companies? What we've seen today is about electricity. Have you been involved in discussions as to how it might relate to gas companies as well?

Mr. Mel Ydreos: Yes. We've had a number of discussions with respect to the applicability, potentially, to gas customers. Those discussions are ongoing. Nothing has been finalized as of yet, and we'll continue to co-operate in a way that is appropriate as we move on.

Mr. John Yakabuski: How many meetings have you had and what's the approximate cost associated with Ontario gas customers with this implementation?

Mr. Mel Ydreos: We've had several meetings with respect to that. The issue of cost allocation was one that was still being discussed and deliberated within the ministry, so we weren't quite certain how the whole allocation was going to play out. That's work that, as I understand, is still ongoing.

Mr. John Yakabuski: Thank you very much.

The Vice-Chair (Ms. Helena Jaczek): Mr. Tabuns?

Mr. Peter Tabuns: Mel, thanks for coming here today and making a presentation.

I'm very interested in the gas marketers, the gas retailers. Does your utility get a lot of complaints about the gas marketers?

Mr. Mel Ydreos: I would say that, off and on, we've had some complaints. I wouldn't categorize it as "a lot." They tend to be spotty and they tend to be more related to, perhaps, the behaviours of a single individual who may have not been properly trained or is not following the proper procedures that the individual has been trained for. That's what I would say.

Mr. Peter Tabuns: Your company does transmission and provides storage. Do you provide storage for gas for any of these marketers?

Mr. Mel Ydreos: Yes. We do have services that there are available to those—

Mr. Peter Tabuns: And do they utilize them with you?

Mr. Mel Ydreos: Yes, they do.

Mr. Peter Tabuns: Thank you.

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The Vice-Chair (Ms. Helena Jaczek): We have about a minute left. Mr. Levac.

Mr. Dave Levac: Mel, you're probably going to be totally shocked and surprised that I don't subscribe to the characterization of Mr. Yakabuski about what we've been doing and how we're moving forward.

Interjection.

Mr. Dave Levac: Shock of all shocks, my colleagues would concur with me. But I do accept what you've presented to us as an opportunity for us, and I understand that you have dialogued with some of the concerns that you've been raising and that the minister has been meeting with you. Staff is here to take copious notes, and we're here to listen very clearly.

I've made the commitment in my career in this place to try to write the best legislation we possibly can. So I look forward to the rest of the deputations. Thank you very much for the work that you do, and I appreciate the comments you made about the concerns you raise about the bill.

Mr. Mel Ydreos: Thank you very much. As I've stated, we've had the ability to have quite a bit of dialogue recently, which is very good.

Mr. Dave Levac: Thank you.

The Vice-Chair (Ms. Helena Jaczek): Thank you very much.

ELECTRICITY DISTRIBUTORS ASSOCIATION

The Vice-Chair (Ms. Helena Jaczek): Now we have the Electricity Distributors Association: Charlie Macaluso, president and CEO, and Michael Angemeer, past chair. Welcome, gentlemen. As you know, you have 10 minutes for your presentation, which will be followed by five minutes of questions.

Mr. Charlie Macaluso: Can I proceed, then?

The Vice-Chair (Ms. Helena Jaczek): Please proceed.

Mr. Charlie Macaluso: Thank you very much for having us here today. I'm Charlie Macaluso, president and CEO of the Electricity Distributors Association. With me is our past chair, Michael Angemeer from Veridian utilities.

Certainly it's our pleasure and we thank you very much for the opportunity to provide our industry's views on the proposed legislation. Mr. Angemeer will give a more formal presentation of the remarks we have on the bill itself, but just before we start that, I'd like to give you a very short description of our organization.

The EDA represents the 80 electric utilities across Ontario that distribute power safely and reliably to over four million consumers. For each of these customers, the local utility is really the trusted face. It's the entity which the customer looks to for guidance and support with most of their energy issues. Collectively, we employ over

10,000 people, and we remit over \$200 million in payments in lieu of taxes each year to the provincial government. Our members collectively invest approximately \$1 billion annually in maintenance and upgrades to a \$14-billion distribution infrastructure.

Our industry is proud of its economic contributions to the provincial economy and the future opportunities to be more involved in renewable energy and to help develop sustainable communities.

With that, I want to introduce to you our past chair, Michael Angemeer.

Mr. Michael Angemeer: Thank you very much, Charlie. I would like to begin by thanking the committee for the opportunity to make this presentation today. In general, the EDA supports the overall direction of Bill 235, which takes significant steps to address customer concerns regarding electricity supply retailer practices and to create new opportunities for smart metering in multi-residential buildings.

The EDA supports the additional measures designed to protect customers from hidden contract costs, excessive cancellation fees and negative option contract renewals; provide greater fairness and transparency for consumers through rate comparisons and plain-language contract disclosure; enhance the ability and rights of consumers to cancel contracts; create a new licensing and training regime that includes mandatory oral disclosure and ID badges for energy retailers; and enable individual suite metering in apartment buildings. These are all positive steps that will enhance consumer awareness and create opportunities for consumers to better manage their electricity consumption.

As mentioned, while generally we support the direction of the legislation, the EDA has three specific areas of concern to raise with this committee today. They include metering of new condominiums, applying security deposits to offset arrears in payment, and increasing liability for service termination.

With regard to unit metering of new condominiums, the current bill misses a significant opportunity to advance a broader public policy agenda of building a culture of conservation among electricity consumers. The proposed legislation provides condominium developers the choice of whether to sub-meter the condo units or suite-meter through the LDC. While this concept of choice appears reasonable, the impacts to the condo unit owner are substantially different. Sub-metered customers will not have access to the conservation programs available to customers directly metered by the electricity distributor.

Suite metering by the LDC provides a direct relationship between the meter and the customer and the LDC and the customer. Each condominium unit is billed as a unique residential customer who will directly benefit from conservation programs aimed at them. In order to successfully build the culture of conservation in the province, we recommend that the committee consider introducing an amendment which would allow LDCs the ability to require suite metering in new condominiums as

part of their conditions of service. Individual condominium owners would then become direct customers of the LDC and direct beneficiaries of conservation programs. Specific wording on our proposed amendment is included in the submission attached to our remarks.

The second issue involves a provision in the bill that seeks to apply security deposits to offset amounts payable or due by the customer. The purpose of a security deposit is to allow the distributor to apply the deposit to accounts where the customer has left the service territory and final payment cannot be obtained. Using security deposits to offset arrears effectively eliminates the purpose of a security deposit, as it will now be used for means other than originally intended. Without a security deposit, LDCs will be exposed to a greater bad debt risk and the potential for higher costs to all consumers to recover unpaid bills. The LDC imposes a security deposit to minimize higher costs for all customers.

The Ontario Energy Board's distribution system code sets out standards related to security deposits. The OEB allows for full consultation with stakeholders should new proposals be considered regarding security deposits. We recommend the removal of this provision of the legislation and that these types of issues remain under the purview of the OEB. We also understand that the province is developing a policy to assist low-income Ontarians. Proposals on security deposits could be also addressed through that policy development process.

In summary, we are recommending that the existing processes that will facilitate more detailed discussion with all stakeholders around security deposits be considered in lieu of legislation.

Our final issue is with section 36(4), which proposes a new section of the Electricity Act, requiring distributors to compensate any person who suffers a loss as a result of the disconnection of electricity in certain circumstances outlined in the bill. The provision expands the scope of damages beyond what is recoverable under common law. Common law limits damages to be recoverable only by the person or persons to whom a duty of care was owed and only to damages which were reasonably foreseeable. These limitations are not expressed in the proposed legislation.

We are concerned that the broadening of the scope of damages beyond what is recoverable through common law practice may raise costs for distributors that would be reflected in higher distribution rates for all customers. EDA recommends deleting this provision of the proposed legislation, given that the current common law practice already adequately allows for compensation to customers when a distributor is at fault. The specific legislative references are available in our attached submission.

In closing, I would like to thank the committee again for this opportunity to present our views. We appreciate the committee's consideration of our recommended amendments to the legislation that we feel will be beneficial in developing a culture of conservation in Ontario, supporting consumer interests, and improving the legis-

lation's effectiveness. We would be pleased to respond to any questions that you may have.

The Vice-Chair (Ms. Helena Jaczek): You've left lots of time for questions: about seven or eight minutes. Mr. Tabuns.

Mr. Peter Tabuns: Gentlemen, thank you for coming today and making this presentation.

This whole question of damages—I'm not familiar with the kind of damages that you can be claimed against for now and what you fear you may be open to. Can you give us a sense of what sort of door you think is being opened here?

Mr. Charlie Macaluso: Certainly. One of the concerns we have is that for various reasons electricity from time to time needs to be shut off for safety, maintenance and repairs. In general, we would be concerned that the legislation may be interpreted to have to compensate people where those situations are actually required for safety purposes for shutoff. We have a number of connection and shutoff conditions we have to meet with all customers today in accordance with the OEB regulations. This seems to be at least potentially interpreted that, regardless, there's a compensation required if we have to shut off, and we would certainly want to make sure that that gets tightened up or removed and allow common law to prevail for those types of exposures.

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Mr. Peter Tabuns: The other question, then, is the sub-metering for condominium buildings. Again, I don't live in a condo, but I assume there are a lot of companies out there that do this sub-metering and develop a billing relationship with electricity consumers. You're wanting to make sure that in fact they don't take over all of that metering activity. Is that correct?

Mr. Charlie Macaluso: No, it's not whether they take over the metering activity. Certainly, there is the option today for sub-meters to install. The concern we raise is that we want to make sure there's a clear understanding that a condominium owner or unit owner who is a sub-metered consumer is not a customer of the local utility, and as a result, by the regulation, we have no ability to service that customer. We could only service customers who are individually metered by the utility. As a result, those sub-metered customers would miss out on any opportunity to participate in conservation programs that the LDC is operating or participating in in that community. It's an important distinction that we want to make sure we try to address.

The Vice-Chair (Ms. Helena Jaczek): Mr. Levac?

Mr. Dave Levac: Again, thank you for your presentation. We've heard what your issues are. And thank you very much for providing us the wording that you didn't read. We'll reference that and make sure staff sees it.

Just to be sure—and you're talking about clarity: The difference between sub-metering and suite metering for the consumer would be that if they own a condo and they're sub-metered, you do not have access to provide them with a service. That is done through whoever it is they've contracted as the main deliverer. What you're

saying is that we should be making the rule even tighter by saying there won't be any sub-metering; there will be suite metering in new condo builds.

Mr. Charlie Macaluso: What we're suggesting is that the utility be at least allowed to require suite metering so that they can provide the conservation programs to all of the residents in the community.

The Vice-Chair (Ms. Helena Jaczek): Mr. Yakabuski?

Mr. John Yakabuski: Thank you very much, Michael and Charlie, for joining us today.

I won't begin with that characterization because I wouldn't want to upset my colleague Mr. Levac—but you tell me: Have the last two or three bills that have been brought forth by this government made the OEB more relevant or less relevant? Can you answer that for me?

Mr. Charlie Macaluso: The OEB is very relevant to our sector and has been for quite some time, at least since 1998. The industry is evolving and the OEB's role in the industry is changing. I don't know if it's an answer—I'm not trying to dodge the question—but the conditions under which LDCs work with the OEB is an evolving situation, yes.

Mr. John Yakabuski: Do you think that this legislation, coupled with the Green Energy Act and others, has made the OEB weaker?

Mr. Charlie Macaluso: I don't know if they're weaker. I think a lot of things are still under construction. That's the way I would put it. We're still evolving.

Mr. John Yakabuski: Would you agree that the OEB was first envisioned as the protectorate of consumers in the electricity sector here in the province of Ontario and that was the reason for the legislation enabling that?

Mr. Charlie Macaluso: The OEB has an important role in that regard, and I think they've done a very good job over the years. Certainly, in the area of conservation and time of use and some of these new measures, the role of the OEB is evolving. We're trying to work with them to create a balanced situation between consumers and LDCs. There are some areas that we hope to see them improve on, yes.

Mr. John Yakabuski: You've raised a couple of concerns with regard to the role of the OEB versus the minister or ministry—let's say, for the sake of argument, the minister. You basically indicated that you don't support some of the things that are being transferred to the minister.

Mr. Charlie Macaluso: I think the one area we referenced specifically is the concern around security deposits. The OEB has a very broad set of rules around how all that works, and we would certainly be concerned with conflicting interpretations of legislation or regulations that put us offside with those existing OEB rules. So in that regard, we're saying to leave it to the OEB to deal with security deposits, late payments and things like that.

Mr. John Yakabuski: Under the proposed legislation, that security deposit could be used to offset arrears. If the

arrears exceed the security deposit, what provisions are there for you folks in the event that that is the case?

Mr. Charlie Macaluso: If the arrears exceed the security deposit, depending on what class of customer it is and what prescribed regulations may come down, we may have to begin shut-off procedures.

Mr. John Yakabuski: Thank you very much. I appreciate your time.

The Vice-Chair (Ms. Helena Jaczek): Thank you very much.

JUST ENERGY

The Vice-Chair (Ms. Helena Jaczek): Now we'll move on to the next deputation, Just Energy: Gord Potter, executive vice-president, regulatory and legal affairs. Make yourself comfortable. As you know, you have 10 minutes, followed by up to five minutes of questions.

Mr. Gord Potter: Thank you, Madam Vice-Chair and committee members, for the opportunity to speak this afternoon. I'm Gord Potter, and I'm with Just Energy. We are an Ontario-based company. We started in 1997 with a handful of people down on Yonge Street to offer energy supply options and customer choice in the province. Some 13 years later now, we have 1.7 million customers across North America. We operate in 20 different markets in the States and Canada, and all but one market is operated in a consolidated fashion out of our staffing in our operations here in Ontario.

To talk about that a bit: As I mentioned, all of our operations, our call centres, are staffed here in Ontario. They feed remotely and service 19 other markets in North America. We currently have about 1,200 direct jobs here in the province, as well as hundreds of spin-off jobs in the services industry and in manufacturing and products.

We support the green economy and job creation. A number of years ago, we began to start changing our product designs to serve consumer interests and the future path forward in energy. We started investing in green and renewable products and carbon-based or carbon-offset products. We purchase most of our stuff from Ontario-based suppliers and manufacturers. Last year alone, we made investments in Ontario of over \$580 million. We have \$68 million in payroll on an annual basis, and we're now, as I mentioned, offering green and renewable products—hydroelectric, wind energy and methane capture—here in Ontario.

We support increased consumer protection in the province, and we're staunch supporters of the bill, in large part. We believe that consumers should be able to make an informed decision and that robust consumer protections are definitely necessary here in the province. In short, the industry has had years to try to start to act responsibly on its own and, unfortunately, we haven't.

Just Energy currently serves hundreds of thousands of customers in Ontario, and it's critical to our business because we serve largely small volume and residential consumers. We need to make sure that their interests are

paramount and that we're able to sustain and continue to grow our business.

Notwithstanding that, about 18 months ago, Just Energy and three other retailers—or suppliers, as they're called in the act—that are here this afternoon got together and began looking and taking serious, effective measures and started to implement them in our sales processes and our service processes. We did that on our own. We now offer plain-language contracts for consumers.

We took a look at the top three or four complaint issues or areas of customer confusion in Ontario and we made mandatory disclosures in our contracts and our materials to try to make sure that things were clear for consumers. Just Energy also repeats those disclosures on the reaffirmation call, which is a verification of the sale shortly after it's completed.

We created an information brochure that's not a marketing piece. It's a standard, unbiased written piece of information that provides a number of different areas of information for consumers to also help assist them in their choice.

We created a standardized training package and a test module for all agents and undertook from that date forward to ensure that all agents went through that training and testing before they were allowed to sell on our behalf. In Just Energy's case, we do background checks on all agents prior to allowing them out to sell our products.

1440

In essence, consumers require full disclosure and transparency in the products being offered to them and they need the opportunity to make an informed decision, but we need a balanced approach. While we welcome the improvements in consumer protection that are offered in the bill—and in fact you probably noted that some of the things I just mentioned are in that bill—as it's currently drafted, it limits the scope in our commercial flexibility that we need to continue to grow in Ontario. The bill has to balance the needs, in our view, of the consumer protections proposed but also maintain a fair and sustainable business climate in Ontario. In its current form, we believe it limits customer choice in some regards, as we will not be able to operate as efficiently or as effectively as we need to. It will, in essence, potentially jeopardize thousands of jobs as some retailers or suppliers may seek to relocate operations to other parts of North America that may offer more conducive regulatory and business climates to operate in.

In short, there are a number of amendments that we'd like to see in the bill but I wanted to go through the top few in my time here today. On page 5, the first amendment is with respect to preserving an automatic renewal option for consumers. As a company, automatic renewals, as they do in many other industries, provide us low cost and a flexibility necessary to manage our customer base. We have hundreds of thousands of customers. We hire people in our call centres, our operations, our billing to maintain those large customer bases, and we need that commercial flexibility to continue moving forward. But

we understand what the concerns have been of consumers—vulnerable consumers—people in this room which I've talked to and others. Consumers don't want to be in a position where, if they don't act by a certain date, they end up in a term contract of five years or a long term that ends up costing them liquidated damages or exit fees to leave. There's also, because energy markets are volatile, at some times, when you do have a renewal that comes up, the price may jump significantly from the current contract price.

We understand those concerns and we believe that we've reached a balanced approach. What we've put forward as an amendment to the bill is to allow that consumers be able to serve customers and offer automatic renewals, as many other industries do today: cellphones, fitness memberships, Internet services, insurance, credit cards, financial products—all automatically renew on a yearly or on a term basis. What we've offered forward to try to balance that as an approach is to provide consumers or suppliers the option to be able to offer an automatic renewal in addition to some other options, but limit it through regulation or under the bill to be a month-by-month renewal product with no exit fees applicable to the consumer. So the consumer may roll over on a month-to-month basis; they can change their mind at any time and leave without exit fees.

Further, to address the price issue, what we've offered is similar to a cellphone—when your contract expires, it just continues on a month-to-month basis at the same rates you were paying—that the regulation to help finish that consumer protection side of it offer that the price does not exceed the current price of the contract that they're under, that it's currently set at. We believe that that balanced approach, supported by clear and robust regulations under the act, will ensure that consumers receive an advance written notice with their options clearly laid out for them, including cancellation and any required disclosures to make sure that they make an informed choice—we think that that balanced approach addresses the concerns for consumer protection as well as provides the company an opportunity to continue moving forward in that regard.

The second amendment: authorized signature. It's our view that the bill is not consistent with the Family Law Act. In fact, OEB staff has also issued bulletins in the past clarifying the authorized parties as indicated under the Family Law Act. The bill, as currently written, potentially limits the signatory to a contract—it would be only the account holder and no one else. We believe that the account holder or their spouse should be able to make that decision. The bill also attempts to preclude people with agency agreements or power of attorney arrangements from acting on behalf of others in this regard. We think that both those cases should be considered to be authorized signatories to the contract.

We have heard in the past that somebody complained because somebody signed up their son or their roommate or an aunt or an uncle, and certainly we support the fact that other parties other than those listed, that I've just

mentioned, should not be entitled or authorized to sign a contract. In fact, any contract signed by anyone other than the spouse or an account holder or somebody with agency or POA should not be binding on the account holder. So we've offered a couple of requested amendments there: subsection 11(5), a small amendment to clarify; and subsection 11(6) we believe should be deleted altogether, as it prohibits agency.

Requested amendment three, cancellation: We support and want to work forward with government and the folks here and others on re-looking at the contract structures going forward for new contracts, ensuring that things are clear for consumers and easily ascertainable so consumers understand that when they enter into a contract there are rights and obligations that they need to consider before they make their choice.

However, the bill, as currently written, appears to suggest that any of these changes may be applicable to existing contracts. We strongly urge people to review that and amend the bill. Contracts that are structured today took into account the risks in providing those contracts and those services. As you probably know, energy retailers procure the energy all the way to the end of the contract when they sign the contract, and, as such, are left at risk of that mark-to-market loss on any positions, as well as costs and other risks that have been put into the contract. So we've just asked for a small amendment to section 20 to make it clear that anything that's determined under regulation is applicable to new contracts.

The fourth amendment, consumer consent: The Electronic Commerce Act and the current regulations we operate under provide that, within prescription, we can have consumers authorize or provide consent over a telephone, so long as it is digitally recorded and maintained for the contract term. The bill, as currently written, appears to change that and almost prohibit consumers from consenting to contracts or providing direction or guidance or acknowledgements by phone. This effectively removes the ability to complete energy contracts or transactions by phone. We certainly believe that as it exists today, consumers should receive written copies or documentation with respect to their decision. However, especially in today's markets, in whatever products you may sell, consumers should be allowed to contract over the phone or provide acknowledgement or consent. We believe it should be followed with robust regulation to ensure that the entire call is recorded, that it is digitally recorded and maintained. It can be produced, if requested.

An unintended consequence, I think, of this section is the fact that this also prohibits me from taking consent from a consumer over the phone to do anything. I have a service relationship with a customer and they call me today and they may give me direction or ask me to change something. This bill, the way it is currently written, under section 7 appears to prohibit me from even doing that, which I don't think is practical. I think it will strain the service relationship with the consumer, as well as increase costs dramatically for the suppliers.

In our view, it appears counterintuitive that the bill offers to remove the sales and service function which, in my view, offers the most consumer protection. When a customer calls you, the entire call is maintained. The context of the call, everything that is said and the consumer's consent is all maintained for the life of the contract.

The Vice-Chair (Ms. Helena Jaczek): Mr. Potter, just three minutes left.

Mr. Gord Potter: Oh, okay. Great. I thought you were giving me the hook.

Requested amendments: We just wanted to offer that subsections 7(1) through (6) should be amended to remove things like "text-based" and "capable of being read by a person." Those clauses, I believe, were added into what currently exists in the Electronic Commerce Act in large part, and we think that it would be best served that we remove those. Allow for telephonic confirmations, and certainly provide the support necessary or satisfactory support in the regulations to ensure there's enough protection around that process.

Finally, there are a number of other technical errors that we believe need to be reviewed, as well as other amendments to the bill as it's currently written. Just Energy, along with three other retailers, will be forwarding a more comprehensive written submission to the committee members within the next day or so which outlines the background on each of those areas, as well as a clause-by-clause review and suggested amendments.

Thank you for your time.

The Vice-Chair (Ms. Helena Jaczek): Thank you very much. Now to the government side: You have two minutes. Mr. Levac.

Mr. Dave Levac: Thanks, Gord. I appreciate the review that you've done. Again, to repeat myself, which I will be doing, we're here to listen and carefully analyze some of the concerns and the issues that are being brought up to try to see if we can come up with a good piece of legislation.

I'm not going to get into banter about whether we're good or evil or bad or whatever. What I do want to talk about is the support that you've shown in terms of your actions over the last 18 months to acknowledge that this is consumer-driven, in that we're trying to do the best we can.

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As you've also indicated, the balance between forcing people out of the province because they can't do business—are there any other jurisdictions that have strict or far-reaching consumer protections within their scope where their companies have not abandoned the region?

Mr. Gord Potter: Yes. There are a number of markets and they have varying degrees of regulation, but I think where they focus more is around consumer protections with respect to, for example, telephonic authorizations. You can do telephonic authorizations, but there are a number of things, such as actually prescribing what the script is. To ensure that people adhere to that, those recordings are used. If there are any consumer issues, recordings are produced. If you stuck to the script and

you've maintained your content, that's something that the regulator and others—MPPs—would verify. They also build on that with respect to, if written documents need to be sent out, how quickly they need to be sent out and things that need to be included in them.

So what we're hoping is that, as we move through this process, we don't prohibit business opportunities, but what we do is we identify what's reasonable and what we think is good for consumers as well as suppliers and simply build the prescription under the bill or under the act to ensure that there are consumer protections around each of those that benefit the consumer.

Mr. Dave Levac: Thanks, Madam Chair.

The Vice-Chair (Ms. Helena Jaczek): Mr. Yakabuski?

Mr. John Yakabuski: I don't imagine we have much time, do we? Thank you very much, Gord, for joining us this afternoon. You've raised a lot of very interesting and valid concerns that, when we're looking at something on an overview, we don't necessarily see. The one about spousal consent: My riding has a lot of military people. A lot of those people could be transferred to Afghanistan for six or eight months at a time. Under the current legislation, if there were some requests on the part of the spouse of the primary bill holder, would that be something they simply couldn't talk about?

Mr. Gord Potter: That's how it appears to be written. That's correct.

Mr. John Yakabuski: Right. So that's something that certainly people in my riding would have an issue with: that the spouse can't actually deal with any issues between the contracted parties during that six-month period.

Mr. Gord Potter: Yes. Further to that, John, in a lot of cases similar to my own situation—my wife is the account holder for my Enbridge account and I'm the account holder for the electricity account. We provide services for both. Without that flexibility, we'd be in a position where we'd have to be able to manage that relationship with separate spouses. We don't have to deal with both of them for both services separately.

Mr. John Yakabuski: I'll leave that for you to work out. Anyway, thank you very much for joining us today. I think I'm probably short on time.

The Vice-Chair (Ms. Helena Jaczek): You've got a few seconds left. Mr. Tabuns, do you have something quick?

Mr. Peter Tabuns: Yes. First of all, I want to thank you for coming and making a presentation today. Your website says that you provide energy price protection. How do you do that?

Mr. Gord Potter: What we do is, in the case of fixed-price contracts, we will go out and purchase the supply. If we sell, for example, a five-year product to you, we'll fix that rate for five years, but we also contract behind us on a wholesale basis for that entire five years. That's how we're able to hedge against the volatility in the energy market. The benefit of that is that I'm able to keep that

rate stable for you for the five years regardless of what the market does, because I've hedged it in behind me.

That's also one of the risks we face if we have consumers who change their minds. When the energy prices go up, as they did about a year and a half ago when they were at very high highs, nobody wants to cancel. When you get into low price cycles, similar to a mortgage when interest rates drop, people start to reconsider their decision. That's why we're concerned over the cancellation rights; we think consumers should have the option to exercise their choice, but we certainly can't be left with a customer leaving the contract without being able to mitigate the risks associated with those obligations.

Mr. Peter Tabuns: Where do you buy your electricity for those five-year locked-in contracts?

Mr. Gord Potter: Ourselves personally, we have contracts with Shell, Bruce Power and a number of other parties, but those are the main ones.

Mr. Peter Tabuns: Thank you.

The Vice-Chair (Ms. Helena Jaczek): Thank you, Mr. Potter.

ONTARIO ENERGY ASSOCIATION

The Vice-Chair (Ms. Helena Jaczek): Now we will move on to the next deputation. We have the Ontario Energy Association: Elise Herzig, president and CEO, and John Priddle, vice-president, strategic communications and stakeholder affairs. You have 10 minutes for your presentation, and I'll warn you at the 10 minutes so that will give us the full five minutes for questions after that. Please begin.

Ms. Elise Herzig: Madam Chair and members of the committee, good afternoon. On behalf of the board and members of the Ontario Energy Association, I would like to thank the members of the Standing Committee on General Government for allowing us the opportunity to comment on Bill 235, the proposed Energy Consumer Protection Act, 2009.

The OEA represents the full diversity of energy and associated industry participants in natural gas, electricity, manufacturing, contracting and service suppliers. Our organization has more than 150 member companies that together support our province's complex energy market. Today, some of our members will also be presenting their own comments on the proposed legislation. It is our understanding—and you just heard from Gord—that their feedback and submissions will be more focused and detailed as they bring their expertise and insights of their own business operations.

The OEA is here today to share the broader perspective, addressing concerns of the OEA's marketing and retailing members, as well as those of the OEA utility member companies. In addition, we hope to bring clarity and new understanding of some of the complexities of the energy sector.

I would first like to emphasize that the OEA and its member companies fully support effective consumer protection, and we are pleased that Bill 235 incorporates

many of the elements developed and proposed by some of our marketer and retailer members, including plain-language contracts and standardized training and testing for company sales representatives. As in many other sectors that operate in our province, there is room for improvement. As such, your work towards achieving a higher level of protection is applauded.

However, in this attempt to do better, it is equally important to make sure that the parts of the system that work stay put—that we build on these foundations rather than try to replace them. The energy system in Ontario is complex, and we believe that the current draft of the bill does not fully take into account some of the complexities of the issues.

These are our concerns: Protecting the vulnerable is one of the most important roles the government plays. The OEA fully supports the values, principles and practices of helping people in need, such as those living on a low income. Indeed, many of our member companies take an active part in charities and various social assistance programs.

We are concerned, however, by the provision for the minister to determine the cost of energy to consumers, which was described during the legislative debate on Bill 235 as a means for the government to provide for lower-income customers as part of the poverty reduction strategy.

We believe that addressing the financial needs of low-income consumers should remain a policy priority of government, which has the authority, expertise, competence and capacity in this area. Regulatory agencies and energy companies do not, nor is it their purpose to provide social assistance or assess who should and who should not receive financial relief.

We believe, therefore, that financial relief for low-income consumers should be addressed through income and other social policy programs, not through artificially suppressing, subsidizing or cross-subsidizing energy rates. This is a complicated system, and price plays a tremendous indicator in terms of other government initiatives as it relates to conservation and business planning. This is an area where regulatory agencies, business and government need to continue to operate as is and should not be modified.

I should also caution that lower costs for one class of consumers would mean higher costs for all other consumers.

We are also concerned that the powers the bill would grant the Minister of Energy and Infrastructure are exceedingly broad and would allow the minister, through regulation-making powers, to undertake activities that have traditionally been—and that we feel should continue to be—the responsibility of the independent regulator, the Ontario Energy Board.

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We believe that rate-making is fundamentally not the role of the minister. Specifically, should Bill 235 become law, the proposed legislation would allow the minister to

assume a core regulatory function of the Ontario Energy Board, that being rate-making.

Making rates and determining costs are complex tasks that have long been the responsibility of the Ontario Energy Board. We maintain that the board should keep that responsibility. The board undertakes rate-making in an open and transparent manner, and public consultation is a key element of this process. The board is professional, independent and non-political, which provides confidence to consumer groups and energy market participants alike.

We therefore recommend that the sections of the proposed legislation that allow the minister to regulate and determine the cost of energy to customers—that would allow the minister to establish through regulations security deposit guidelines, disconnection policies, the manner in which they are presented and to which classes of persons or customers they are to be presented—be removed from the legislation.

We further recommend that giving the minister authority to approve requirements or the form of gas distributors' invoices be removed.

As in many other sectors, consumers have the ability to extend contracts with automatic renewal systems. The premise of these systems is to provide consumers with windows to explore and learn about options available and make educated, long-term decisions. This period removes from the consumer the pressure to make a quick decision and enables them to research and learn more about the level of their future commitment.

For example, with regard to energy contracts, automatic renewal is allowed for natural gas, which provides customers with peace of mind by removing the need to worry about what and where their energy supply comes from.

We therefore recommend that legislation continue to allow gas marketers to provide automatic contract renewal, and that automatic renewal also be permitted for retail electricity contracts. We also recommend that for both natural gas and electricity, contracts be allowed to be renewed only on a month-to-month basis and subject to penalty-free exits. A penalty-free exit renewal framework would provide both customer convenience and strong consumer protection.

Under current legislation, retailers may satisfy a requirement for anything in writing to be taken electronically, either as a voice or electronic signature. We are concerned that consumer protection could in fact be weakened by the proposed requirement for text-based contracts and signatures, which essentially position the consumer and the retailer one step backwards.

Transactions conducted by telephone enhance consumer protection because calls can be recorded and provided as required to the appropriate regulatory body. Further, not all consumers have access to energy retailers in person, and access to the Internet may be inconsistent, particularly for those outside major urban areas. Phone conversation allows the customer to ask for clarification and to better understand what is being presented.

However, we do have a recommendation that we believe can better protect consumers. Follow-up written confirmation of the phone call should be sent to consumers, which serves as their own paper trail for the electronic agreement for services.

The Vice-Chair (Ms. Helena Jaczek): Just one minute left.

Ms. Elise Herzig: Doing business in Ontario means that companies need to be able to plan and manage their businesses effectively. The proposed legislation, however, appears to permit customers to cancel valid contracts without cause, as long as they give specified notice. This would unfairly place on energy marketers and retailers restrictions that do not apply to other businesses.

Energy marketer and retailer member companies agree that consumers need to be aware of their rights and obligations before they enter retail contracts, and to that end, they have already implemented a range of consumer initiatives, talked about earlier.

Since I'm cutting down to one minute, I'm going to quickly get to the bottom part here.

Finally, the reference in Bill 235 to electricity retailers setting contract prices based on prescribed requirements is of concern because it suggests that retailers' ability to structure their products will be limited. That, in turn, would limit retailers' ability to provide a range of products suited to customers' needs. We, therefore, recommend that energy distributors, marketers, retailers and consumers be consulted before any regulations are formulated to determine how electricity prices and services are presented.

Thank you again for the opportunity to speak today. A formal submission will follow. I would be pleased, and John as well, to answer any questions you may have.

The Vice-Chair (Ms. Helena Jaczek): Thank you so much, and we'd appreciate receiving a copy of your material.

Mr. John Yakabuski: Thank you very much, Elise and John, for joining us this afternoon.

First of all, I want to certainly emphasize that consumer protection is of paramount concern to all of us here with regard to this legislation and in general as members of the Legislature. I certainly appreciate the work that the OEA has done in the past couple of years in trying to promote and improve the circumstances surrounding energy retailers. What started out as a process of trying to correct what we saw as faults with the door-to-door has turned into something significantly bigger, almost back-door socialism, when it comes to the minister having you people subsidize the rates of electricity.

The poor and the vulnerable—the government has a responsibility in a society such as ours to enact legislation to protect them, but it seems like they're making you and your member companies the agents of this social change. You've commented on it, but I'd like maybe something a little more direct as to how you see this affecting the role of government and private entities with respect to having an electricity rate that's basically—you

people are out there doing the social work as opposed to the government itself.

Ms. Elise Herzig: I've had the privilege of doing a lot of work with the vulnerable, and the saddest thing about working with that group of our society is that they tend not to have a voice, and even if they have a voice, they're usually not heard and they tend to fall in the cracks of the system. So I'm a big believer that this is a responsibility of every citizen of this province to deal with, but it needs to be dealt with in a holistic way and not in a patchwork way.

My concern is that by giving the minister the power to change the prices for this group that needs help on so many levels, they may not be getting the help that they need at other levels, and it sends very mixed signals in our marketplace that are dangerous for us to have. If we're trying to get conservation efforts, if we're trying to get business decisions made on pricing and we start putting these people in the position where they get to judge who gets the help and who doesn't get the help, it's a very dangerous scenario. These are real issues, and these people, very often through no fault of their own, find themselves needing to be protected, but I don't believe that the legislation necessarily protects them with the intent that I think this government wants for them. I think the intent is a good intent; I just think it's the wrong solution.

Mr. John Yakabuski: Thank you very much.

The Vice-Chair (Ms. Helena Jaczek): Mr. Tabuns?

Mr. Peter Tabuns: Thank you for coming down and making this presentation today.

The concern you have about telephone conversations being the basis for a contract—the most frequent complaints I get about energy marketing firms come from people in my riding for whom English is not their first language. For them, a written document is something they can share with family or friends and get an interpretation. It's much harder for them over the phone. What sort of support do you provide for people for whom English is not their first language when they are dealing with these kinds of contracts?

Ms. Elise Herzig: Not being a retailer in that position, I can't answer specifically. I know that there are a number of people in this room that can. But I think what we would like to suggest is that it's important for individuals to be able to understand what they committed to, and if there's a way that we can use the technology we have, that there can be a paper trail and there is a period of time where people can make a decision topped out, this gives them a piece of paper that tells them what they committed to. So we're saying: Benefit from the technology, use the technology in the best possible way, but use it also to protect the consumer; give that consumer a chance.

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In terms of other languages, there may be opportunities. This is a group that really has tried to work well with the government to initiate a number of projects, whether it's around plain language and training. This

could be something that we look at, as our consumers have changing needs. I'm sure the OEA would be happy to actually create a discussion for you on that. We could set something up.

Mr. Peter Tabuns: Thank you.

The Vice-Chair (Ms. Helena Jaczek): Thank you. To the government side, Mr. Levac.

Mr. Dave Levac: First and foremost, thank you for coming and presenting. The OEA has worked with the government in the past, and I think their intentions are to continue to do so. Thank you very much for acknowledging the intent of the legislation on the one side, which is specifically consumer protection.

I'm not going to delve too much into detail other than to say that in terms of your presentation, you indicated to us that you'd give us a more thorough presentation. Inside of that, would you be including the recommendations and amendments—or wording to amendments—that would assist in the staff offering some feedback on your view of the bill? Are you including—

Mr. John Priddle: We'll actually be giving a summary of this. However, we can be available for consultations on that, and some of our members here are much more well-versed in the minutiae.

Mr. Dave Levac: If they have anything that they can put in writing, it would be beneficial.

My last comment to you is—some people haven't been repeating this, and I'm just going to start repeating it now—that the government plans to do a very wholesome consultation on the regulatory stream of the bill as well. So inclusive of the bill itself, there's going to be some dialogue on the regulations that might assist the membership in terms of some of the minutiae that we're talking about.

The Vice-Chair (Ms. Helena Jaczek): Thank you very much.

ENBRIDGE GAS DISTRIBUTION

The Vice-Chair (Ms. Helena Jaczek): Next, we have Enbridge Gas Distribution, if you'd like to come forward: Debbie Boukydis, director of public, government and aboriginal affairs, and Mike Mees, director, customer care. Again, you have 10 minutes for your presentation. I'll warn you at about the nine-minute mark, and then we'll have five minutes for questions.

Ms. Debbie Boukydis: Thank you, Madam Vice-Chair. Good afternoon, committee members. On behalf of Enbridge, we appreciate this opportunity to share our comments on Bill 235, the Energy Consumer Protection Act, 2010. I should note at the start that Enbridge Electric Connections, an affiliate of Enbridge Gas Distribution, will be speaking later today to provide their input on the suite sub-metering content of the legislation. My remarks will be focused on the gas utility and related issues.

Enbridge Gas Distribution is Canada's largest natural gas utility, with 1.9 million residential, commercial and industrial customers in about 100 Ontario communities, including Toronto, Ottawa, Barrie and the Niagara

region. Founded in 1848 as the Consumers Gas Company, we have played an integral part in Ontario's economic growth and prosperity since before Confederation.

Our relationships with our customers, large and small, are the cornerstone of our business. Enbridge is caring and supportive in providing assistance to all customers, and we place a priority on helping all customers stay connected to gas. As a result, we are keenly interested in Bill 235. We are here today to tell you about the actions that we have already taken to alleviate any hardship faced by low-income customers and why some of the provisions of Bill 235, while being aimed at retailers, could have undesirable and unintended consequences for Enbridge and our customers.

Enbridge takes pride in our customer care practices and policies. As part of the Ontario Energy Board's low-income consultations in 2008, we asked the independent consulting firm IndEco to compare Enbridge's practices with the practices of other utilities in Canada and the United States. IndEco reported that when it came to issues such as disconnections, late payment penalties and equal billing, Enbridge rated high relative to our Canadian peers in terms of the flexibility and leniency of our policies. These outstanding results show the importance we put on supporting our customers, particularly the most vulnerable.

Let me begin with security deposits. We provide new customers with a number of options to avoid the need for a security deposit. These include signing up for a pre-authorized payment plan, providing a letter of reference from their previous gas or electric utility, or providing a report from a credit agency. In short, any new customer with good credit can avoid a security deposit if they choose.

Security deposits may be required for customers with poor payment histories. These payments are required as a matter of fairness to our other customers. Utilities need to ensure their collection policies protect the vast majority of customers who pay their bills on time so that these customers are not burdened with added costs and fees. However, existing customers who are asked to pay a security deposit also have the same options as new customers in order to avoid security deposits.

Enbridge uses security deposits very sparingly. If a customer is in arrears but agrees to a mutually satisfactory payment schedule, a security deposit may be avoided altogether. If a security deposit is required, it typically works out to about two months' worth of gas charges.

We are confident that our policies are aligned with the government's intention in Bill 235. Then-Consumer Services Minister Ted McMeekin commented during second reading, "It is only natural that companies exercise due diligence in the extension of service to those with a checkered past in paying their bills."

Let me turn to disconnections. I want to stress that disconnecting customers is always the last resort for Enbridge. Disconnections create significant labour costs for the utility and also stop the customer from using the

product we distribute. It is simply not in our interest to disconnect unless we feel there's a significant amount of arrears which we do not have a reasonable prospect of recovering without disconnection.

As the company's ombudsman, I deal with these types of cases every day. My team and I are tremendously creative in developing payment schedules and other solutions that help customers keep their heat on without falling too far behind on their bill. My staff are the front-line workers and they do a tremendous job of helping customers out, who are often facing financial difficulties on other fronts as well.

We work with customers to fully explore alternatives to disconnection, including developing a payment schedule, seeking assistance from the winter warmth program that we initiated with the United Way, or referring them to social agencies which can provide financial support. We will allow customers to pay off their arrears over several months if it will give them the financial flexibility to keep up with all their bills. Enbridge does not disconnect residential customers during winter months. This has been a long-standing policy.

Much of the stated intent of Bill 235 is to protect the well-being of low-income residential energy customers in particular, so I would like to spend a few minutes on that topic. Enbridge is particularly concerned about situations where low-income customers find themselves in arrears due to factors beyond their control—things like illness or loss of work. That's why in 2004, Enbridge, Toronto Hydro and the United Way launched the winter warmth program to help customers below the Statistics Canada low-income cut-off to deal with their gas bill. This program has expanded over the years to include Union Gas and many other electricity utilities. To date, over 9,000 households have received up to \$450 for assistance to help keep their heat on.

This is an initiative the utilities started on their own, without any prompting or requirements from any level of government. It is a good example of the responsibility we take towards helping our own customers.

Additionally, Enbridge already works diligently with low-income customers and customers of any income level to avoid disconnections in the first place. We also offer energy efficiency programs and special arrangements for senior citizens through our Golden Age Service.

Next, I'd like to briefly highlight the distinction between classes of customers. The intent of the legislation is clearly to address situations facing residential customers, in particular those who may not have the financial means to pay in a timely manner. The legislation and related regulations should not interfere with Enbridge's business relationships with commercial or industrial customers, which are clearly outside the intent of this legislation.

Finally, we would like to express our serious concerns over provisions in Bill 235 that would allow the government control over the Enbridge bill. Enbridge engaged in a \$120-million project to refresh our bill presentation and

modernize our customer information systems over the last couple of years. The result is a more clear, understandable bill which provides detailed information to our customers about their historic gas usage. Enbridge also provides significant information to consumers via bill inserts on programs and incentives to help reduce their energy use.

Furthermore, the legislation leaves the regulation-making power wide open. The ministry would have unfettered power to modify the bills as they saw fit. While this power exists over electric utilities, this is an apples and oranges argument. Municipal utilities are, for the most part, owned by the public sector. Many of them are also relatively small, with limited ability to engage in the depth of customer care work that Enbridge does.

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Enbridge is a private company which has dedicated significant resources to customer care. We are unaware of any occasion in the last 160 years where the government has objected to the presentation of our utility bill. We have business relationships with all of our customers, and we do not agree that a third party should interfere with the communication between those parties without clear justification.

As this committee considers amendments, I hope that you will recognize that Enbridge has made it a priority to develop customer service practices that are proactive, sustainable and meet the needs of the broadest number of customers. That's why we're very proud that the IndEco report rated Enbridge so highly.

Bill 235, at its heart, is about improving the retail market. The provisions around security deposits, disconnections and the utility bill are not based on any concern over the behaviour of the utility. There should not be any unintended consequences from Bill 235 incurred by the utility or its customers.

Additional layers of regulation and red tape would only serve to limit the flexibility we require to meet the various needs of our customers. Our reputation has stood strong for 160 years in Ontario, and we're committed to building on that record going forward.

We would be pleased to answer any of your questions.

The Vice-Chair (Ms. Helena Jaczek): Thank you very much. We have some six minutes. Mr. Tabuns.

Mr. Peter Tabuns: Debbie, thanks very much for the presentation. Can you tell us a bit about arrears and disconnections? Have you seen a substantial increase in those in the last year or two?

Ms. Debbie Boukydis: I'll turn that one over to Mike. I would say we haven't, but—

Mr. Mike Mees: In fact, yes, Debbie is right. We haven't seen an increase in disconnections, even with the economy the way it was. Actually, our disconnections are probably down about 1% from 2008 to 2009.

Mr. Peter Tabuns: Do you have any understanding of why that's the case?

Mr. Mike Mees: I think customers are still paying their bills. We get 93% of our customers paying their

bills within 30 days. Customers are still working hard to make sure that they pay their bills off as soon as they can.

Ms. Debbie Boukydis: We were talking about the process that we go through for disconnections. We have a full 78-day period from the time a customer first learns that they're in arrears before we would even consider any disconnections. We work very, very hard to ensure that the customers do stay connected.

Also, there is the winter warmth fund. Last year we had \$650,000 put into the winter warmth fund, and we helped 1,200 customers. That first line of defence—being able to help customers stay on—is a priority, and it's working.

Mr. Peter Tabuns: Okay. Thank you.

The Vice-Chair (Ms. Helena Jaczek): The government side. Mr. Levac.

Mr. Dave Levac: Thank you for the presentation, Debbie and Mike. It seems to me that you're pointing out concerns of the legislation that have a possible unintended impact on you, and that, in some cases, it may indeed be intended. The question I would have is, then, why are we here? If there had not been a lot of stuff happening to the consumer at the door, we probably wouldn't be here. I'm told by one of the deputants, "Yes, we've had some time to get this cleaned up, and we didn't," and now we're looking at it. I hope you don't read that as an attack, but then what is it that we should be doing specifically? I think you're telling us, as are some of the deputants, that there are things that are unintended that you believe are happening to the company that shouldn't be happening, but you are indeed supportive of consumer protection. Am I reading that right?

Ms. Debbie Boukydis: I would say that's correct. Again, the policies of disconnections and security deposits—we've been working for a long time with the government and the Ontario Energy Board, and we believe that our customer care practices speak for themselves.

Whether or not this bill perhaps was not intended to tighten up all of the work that we're currently doing to protect our customers—as well as our utility bill too. That is something that we have worked on very closely with the government—to talk about communications—and with the Ontario Energy Board.

If, in any of this legislation, it's going to put more oversight on practices that we believe that we're already doing well, those are the unintended consequences that we're talking about.

Mr. Dave Levac: You'll be providing us with a deputation and details of the concerns—

Ms. Debbie Boukydis: Which we have done, but most certainly, we will put this on the record as well.

Mr. Dave Levac: Right. And amendments: Have you made specific recommendations for amendments?

Ms. Debbie Boukydis: No, we haven't.

Mr. Dave Levac: Is that something you would care to do?

Ms. Debbie Boukydis: Absolutely, yes.

Mr. Dave Levac: We'd definitely want it.

Ms. Debbie Boukydis: Yes. And if there's interest, I can also include the IndEco report so you can look at the more fulsome—

Mr. Dave Levac: I'm sorry; back up.

Ms. Debbie Boukydis: The IndEco report that I referred to, which gave a more fulsome overview of our customer care practices.

Mr. Dave Levac: We absolutely would want it; we absolutely would like it.

The Vice-Chair (Ms. Helena Jaczek): Thank you—

Mr. Dave Levac: Can I refer it to the clerk to make sure that that communication happens?

The Vice-Chair (Ms. Helena Jaczek): I was going to mention that the clerk in fact does not seem to have received any written material from you.

Ms. Debbie Boukydis: Oh, all right.

Mr. Dave Levac: Thank you.

The Vice-Chair (Ms. Helena Jaczek): And now Mr. Yakabuski.

Mr. John Yakabuski: Thank you, Debbie and Mike, for joining us this afternoon. I just want to comment on my friend from Brant, Mr. Levac. I have a hard time connecting how a problem that clearly existed and had to be dealt with in some ways, which was the misrepresentation, if you want to go that far, but certainly problems at the door in regard to the contracts of energy retailers and taking that to social engineering and determining gas prices based on different classes in this bill—it's hard to connect the two. This is the way that this government likes to do things—through the back door.

I want to talk about this new \$53-million tax, which you people are very well aware of. We know that it hit electricity companies over the last weekend, and they're now expected to be the tax collectors for the government.

Have you or your company engaged in any discussions with the Ministry of Energy on this issue of collecting taxes, regulation 66/10? Have you met with them? If you have, how many meetings have you had with them, and what is the approximate cost associated with Ontario gas customers that you would be expected to be collecting on behalf of the government with their new tax program?

Ms. Debbie Boukydis: As my colleague Mel Ydreos, from Union Gas, said, Enbridge and Union have been meeting with the government throughout the last couple of months to talk about what this program would look like. There have been a number of meetings. In terms of the actual cost, that hasn't been determined at this time. There have been different numbers that have been sent about but, at this point, it has just been a meeting talking about how this actually would be collected and what it would be used for.

Mr. John Yakabuski: So if they're talking to you about collecting, that's over and above the \$53 million that they're collecting through electricity companies. So it would be reasonable to conclude that we can expect more down the road, should these talks continue. Is that correct?

Ms. Debbie Boukydis: I believe that there would be similar treatment for the gas utilities as there is now for the electric utilities.

Mr. John Yakabuski: So when the minister says, "No new taxes," we don't want to take that one to the bank. Thank you very much. We appreciate your submission today.

The Vice-Chair (Ms. Helena Jaczek): Thank you very much.

Ms. Debbie Boukydis: Thank you.

SMART SUB-METERING WORKING GROUP

The Vice-Chair (Ms. Helena Jaczek): Now the next deputation, Smart Sub-Metering Working Group: John Macdonald, president and CEO, The Consumers' Waterheater Income Fund, and Rob Fennell, General Manager and COO, Enbridge Electric Connections Inc.

If you'd just like to come forward and make yourselves comfortable. As you know, you do have up to 10 minutes for your presentation. I'll warn you at the nine-minute mark, and then we'll have questions from all three parties. Please proceed.

Mr. John Macdonald: Good afternoon, and thank you very much. My name is John Macdonald. I'm here on behalf of the Smart Sub-Metering Working Group. We generally support the bill, and here's why.

First of all, it protects the small guy. The bill will ensure that no one will be arm-twisted into signing up to a sub-metering deal.

Secondly, it helps stop power wastage in the 1.75 million homes in Ontario where there's no metering of the electricity supply.

It's great for the environment, because in reducing electricity consumption in those suites, we will substantially reduce the amount of power demanded in the province at peak times.

Lastly, it help controls crime. Smart sub-metering has been shown to uncover grow-ops in many, many instances. There have been recent articles about what the grow-ops do to multi-residential buildings. They do worsen the environment for the tenants, and it's something that we're very concerned about.

As a quick summary, we believe the bill allows a much wider proportion of Ontarians to participate in a culture of conservation. I have some prepared remarks I was going to read as well.

Our group represents most of the private sub-metering providers in Ontario. Our members are licensed by the Ontario Energy Board. As I mentioned, there are 1.75 million suites in Ontario, of which 100,000 are sub-metered by our group, and about 50,000 are sub-metered by the local electricity companies. Suite metering is the norm throughout Europe and in many American states. In many places it's illegal to build new construction of multi-residential buildings without separate electricity metering. This bill should help Ontario match the conservation success of some of these other jurisdictions.

1530

Electrical sub-metering, for those who are not familiar, is a system where apartments and condominium buildings are measured by a single bulk meter monitored by the local utility, and we add, within the building, meters to monitor electrical consumption of every individual suite. Instead of electricity costs being included in rent or common area fees, residents receive monthly bills based on their actual consumption. Suite metering, we believe, represents the single, biggest and quickest way to reduce electricity consumption in the multi-residential sector.

We are supportive of Bill 235, but we do have some concerns we'd like to bring up.

We welcome the bill's recognition of individual suite metering in apartment and condominium buildings. When residents are provided with transparent information and take responsibility for paying their monthly electricity costs, electricity consumption for the building is reduced between 15% and 25%. This has been shown in a number of studies in Ontario, New York and other jurisdictions throughout North America. This translates into monthly energy savings of the equivalent today of 17,000 homes, based on our current penetration. We believe there's an ability to substantially increase that through time.

As I mentioned, the other benefit is the uncovering of illegal grow-ops. Aside from being illegal, they provide a major health and safety hazard to residents.

We're very pleased to see the explicit confirmation that private independent companies can continue to provide suite-metering services alongside local distribution companies and help realize the province's conservation objectives.

However, we submit that rate regulation is unnecessary where there is competition. Indeed, the OEB's own statute provides that it will forebear from exercising its powers in situations where customers are already protected by competition. Our current and future prices and services must be competitive in order to attract and retain customers—landlords and condominium boards—who purchase our services. These competitive pressures will provide price and service protections for our residents.

The OEB already regulates LDC rates. Private competitors, like those in our group, price their services in relation to LDC rates. In almost all cases, our rates are lower, and the OEB also has oversight over smart sub-metering companies through the licensing process.

Apartment residents become customers of smart sub-metering providers through a voluntary decision. If the cost of sub-metering is too high or the rent reduction is too small, the customer will refuse to accept the service or rent elsewhere and, under Bill 235, they have that right. Consumers need accurate and clear information: the price of metering, the average electrical consumption in the suite and the rent, all of which our group is advocating.

Once again, I'd like to thank the committee, and I'll pass it over to Rob Fennell from Enbridge Electric.

Mr. Rob Fennell: We're pleased to see the changes being proposed to the Residential Tenancies Act to permit suite-metering of apartment units. The changes will remove uncertainty and support a recent Ontario Energy Board decision. Our group is pleased to see that the RTA's new rules will apply equally to private providers and LDCs. We make the following recommendations.

The changes to the RTA and the related regulations should take a balanced approach that facilitates tenant choice and encourages metering and conservation in rental apartment buildings. The OEB has already created a sensible solution in an August 2009 decision. The OEB set out what constitutes informed consent for tenants taking responsibility for their electricity costs. The OEB's approach should be reflected in the legislation and regulations.

Sub-metering conducted in accordance with the August 2009 OEB decision should be recognized as valid and grandfathered by Bill 235.

The legislative and regulatory approach currently taken to regulating smart sub-metering activities in condominiums has worked extremely well in supporting consumer protection, the growth of smart sub-metering and also in energy conservation.

We recommend that the new provisions in Bill 235 should essentially replicate what exists for condominiums and be applicable to both condominiums and rental apartments, with changes being made only where necessary.

In Ontario, most multi-residential buildings are heated by gas or oil. In-suite electricity consumption is primarily related to refrigerators, air conditioners, lights, computers and televisions, all of which can be controlled by the resident. In our experience, energy savings are realized by decisions taken by the residents such as turning off lights and air conditioning units when leaving the suite. Simple changes have led to immediate and significant drops in consumption in buildings we sub-meter. It's also the reason that suite metering has been such a success in Europe and the US.

While electrically heated buildings are a relatively small number across Ontario, the building envelope does have an impact on the cost of electricity consumption. We are recommending to the Ministry of Housing that the regulatory focus be on providing accurate information to current and prospective tenants as to the expected average heating costs of the suite instead of the complicated regulatory mandates and calculations that are being contemplated. Residents can then make an informed decision on whether the proposed rent reduction is sufficient to offset the cost of heating the suite.

Finally, we think that Bill 235 represents a major opportunity for both conservation and fairness within the apartment and condominium market. Electricity consumption will drop and those residents who choose to use more electricity will pay for that choice rather than having others subsidize them through their rent. However, we are concerned that without changes to the

legislation and regulations, the opportunity will not be fully realized.

Thank you for the opportunity to speak.

The Vice-Chair (Ms. Helena Jaczek): That's excellent. Thank you. We have six minutes left, starting with the government side. Mr. Levac.

Mr. Dave Levac: John and Rob, thank you for presenting. Does the working group have any other participants?

Mr. John Macdonald: It does. There are six members in total. Do you want me to read those in—

Mr. Dave Levac: If you have them for the record, it wouldn't be a bad thing to have so that we can make contact if we need to follow up.

In terms of the legislation itself specifically, I know that you've talked about some of the things that need clarity. You are aware that some of the issues that you are talking about are contemplated through regulation.

Mr. John Macdonald: Correct.

Mr. Dave Levac: And that there will be some consultation as well during the regulation drafting.

Mr. John Macdonald: We look forward to it.

Mr. Dave Levac: And we would more than welcome your participation on that.

Now the specific question: When you talk about the way in which tenants behave, in essence, inside of their apartment buildings, it's your experience that when they are given the opportunity to pay for their electricity or their power directly, consumption goes down.

Mr. Rob Fennell: Right. It goes down by 15% to 25%, in our experience, and it goes down almost immediately. It's our belief that it's the behaviour that changes, driven by the requirement to pay their own electricity costs.

Mr. Dave Levac: In your experience, has there been anyone to teach them, school them, advise them, work with them to ensure that they understand that they do have domain?

Mr. John Macdonald: We provide a residents' seminar before the implementation of sub-metering, where we explain how the sub-metering occurs and give them some energy tips in terms of how to reduce consumption. I would submit that information is the key to getting people to participate and understand how to save money.

Mr. Dave Levac: My colleague Peter asked a question that we are involved in, and that is language. Would your seminars also be offered in different languages as well?

Mr. John Macdonald: Currently, our seminars are conducted in English only, but where there is a significant population of non-English-speakers, we're certainly interested in providing information in other languages.

Mr. Dave Levac: And the government would work with you.

Mr. Rob Fennell: We have one example where our meeting was conducted in Cantonese, based upon the tenants.

Mr. Dave Levac: Thank you.

The Vice-Chair (Ms. Helena Jaczek): The official opposition? Mr. Yakabuski.

Mr. John Yakabuski: Thank you very much, John and Rob, for coming to see us today. Sub-metering, suite metering: Those two terms get kind of bandied about. They don't mean exactly the same thing but they can have a similar effect in the fact that it does reduce the amount of electricity being used.

It's interesting. I've been a proponent of this since I got here in 2003, and we've had different committees on different bills talk about this issue. It's amazing to me that it has taken this government until 2010 to actually get around to doing something. I know that George Smitherman personally opposed it. That may have something to do with the fact that it took so long for this to get here. One of the primary, easiest ways of reducing energy consumption is to ensure that everybody is directly accountable for the electricity they use. So I certainly support that component of the act.

1540

We had the Electricity Distributors Association in earlier. They have a concern with the option to sub-meter new condominiums. They want all units to be directly metered so that the electricity provider has a direct contractual relationship with them. What is your view on that? I know you touched it in your submission, but if we could have a more direct answer on that—

Mr. John Macdonald: We believe developers and condominium residents should have a choice of who meters them. We don't think it should be monopolized by the incumbent utilities.

Mr. Rob Fennell: Competition and offering different programs for different needs has certainly allowed for more penetration than the local distribution companies have had.

I think that LDCs are suggesting that the programs they would offer would not be available to tenants of sub-meterers. My solution to that is simply to find a way to make them available. There's no reason to treat them any differently than ones they directly meter in order to drive increased conservation in the province.

Mr. John Yakabuski: Thank you very much. I appreciate that.

The Vice-Chair (Ms. Helena Jaczek): Mr. Tabuns?

Mr. Peter Tabuns: Thank you, gentlemen, for making the presentation today. I have lived in a high-rise building that was situated on a north-south axis, so the building was an extremely effective collector of solar radiation. I have to tell you: In mid-July, the air conditioner in my apartment was going full-tilt just to keep the temperature in the 30-degree range.

My experience is, in fact, the building envelope has a huge impact on the air conditioning demand. What we have before us is a situation where tenants—elderly people—will be in their units mid-afternoon, mid-July, and worried sick about how much it's going to cost them to keep their unit at a temperature they can live with. Why have you not addressed that question of envelope

and its impact on those consumers when you talk about air conditioning?

Mr. John Macdonald: We've spoken about electrically heated buildings.

Mr. Peter Tabuns: For electrically cooled units in apartment buildings, the state of the envelope has a big impact, and you've said that it doesn't.

Mr. John Macdonald: We've done studies that looked at similar suites vertically, at the same level. We've found that within a building, the same suite on different floors can have as much as a 6-to-1 difference in terms of energy consumption. I would submit that things like keeping the windows closed, having an efficient—in most cases, the cooling is supplied by the tenant. The tenant supplies their own air conditioning device. There are very substantial differences in the efficiencies of those, as much as 3-to-1 between an older, non-Energy-Star air conditioner and one that's relatively new. In addition, people can set them to be off during the day, when they may not be there. So there are ways for them to control the energy consumption within their suite.

Mr. Rob Fennell: I think we've also seen that the temperature setting in the suite is lower when the energy consumption is covered in rent. Certainly, from my daughter's place in London, we've complemented hers by putting fans in, so the temperature of the air coming into the unit is a little less, but they just use fans, which is a much lower cost of electricity. She is paying for her electricity.

The Vice-Chair (Ms. Helena Jaczek): Thank you very much. That concludes your deputation.

FEDERATION OF RENTAL-HOUSING PROVIDERS OF ONTARIO

The Vice-Chair (Ms. Helena Jaczek): If we could have the next deputants, the Federation of Rental-housing Providers of Ontario: Vincent Brescia, president and CEO, and Mike Chopowick, manager of public affairs.

As you know, you have 10 minutes to make your presentation. I'll warn you at the nine-minute mark. Then we'll have some questions. Please proceed.

Mr. Vincent Brescia: Thank you, Chair, and thank you to all the committee members for having us. Welcome back to the provincial Legislature, Mr. Chiarelli. It's good to have you back.

Rather than written notes, we have a short slide presentation, because what we've found is, to make decisions in this area, you need factual information on which to base them, and there's a lot of mythology that gets floated around, we find, in this area of discussion.

The first slide is a summary of some of the background information I'm going to provide you, so I'm going to skip over that slide. It's just there to give you a quick summary of some of the problems.

I'd just say as an overview that we're very glad to see the government's verbal support of the idea of individual billing and suite metering. However, from our organ-

ization's perspective, this legislation and direction is a lost opportunity for significant energy conservation for Ontario. So we're disappointed from that perspective.

The second slide summarizes some of the comments of key officials in the government, Minister Duguid and Mr. Smitherman, that conservation is the greenest thing the government can do. We wholeheartedly agree with that. "Negawatts" is what the greenies call them. It's more important to conserve than it is to have new wind turbines or have the coal plants firing. Suite metering really helps the whole issue of conservation. It's the lowest-hanging fruit in the province of Ontario at the moment, actually.

On the third slide you'll see absolute proof that individual billing leads to significant energy conservation. This is from a Statistics Canada study. It shows the difference in consumption between households that are responsible for payment of their bills and those that are not. What you'll see in this is that it's 58% less consumption for those who are paying their own bills versus those who are not.

You're going to hear some mythology from other presenters. Some will say that once the tenants have to pay for hydro, there's no incentive for the landlord to invest in the infrastructure. This data proves that this is a myth and a false claim. If it were true, what you would see is that when tenants are responsible for energy consumption, there wouldn't be savings as some others are going to tell you. In fact, the savings are massive.

If we look at data we have from recent conversions of gas-heated buildings to electricity, so that heat's not even being included, we're seeing 39% less electricity consumption when individual billing takes place. Again, this is clear proof that there are significant savings when you move to individual billing—all of this, by the way, at no cost to the government.

On slide 5, you'll see some data that shows you the differences in consumption in identical suites. This is from a series of buildings where the suites are absolutely identical in every way, and you see the range of consumption. Consumption within a suite is determined almost entirely by the tenant's behaviour, not by these other things which are red herrings and which people tend to raise—infrastructure and things like that.

Another important element that you need to keep in mind: Slide 6 shows you that bulk billing results in the poor subsidizing the rich. It's well known around the world and in all kinds of data that as income rises, energy consumption rises. So in a situation where you have bulk billing like we have in our sector, you end up instituting a system where low-income people subsidize the electricity consumption of higher-income people. If we were to move all of it at once, all this bulk billing we have in Ontario, to individual billing, the largest beneficiaries would be low-income households in the province of Ontario.

On slide 7, there's another important point to keep in mind, and not a lot of people seem to have been aware of it: Individual billing has been going on for decades in

Ontario. It's not something new. There's sort of a sudden reaction recently—we think a bit of an overreaction—with regulation to the notion that tenants might face individual billing. A quarter of the province has been individually billed forever, and there haven't been any issues. Legislation governing our industry has been amended multiple times in past decades. It's never raised as an issue. You don't get calls in your constituency offices about this issue because it hasn't been an issue.

Slide 8 points out the differences between Ontario and other jurisdictions. We are behind the rest of the world when it comes to individual billing. The US has 80% of their stock individually billed; we have 26%. We're an anomaly. This is an unfortunate situation for Ontario.

I was at a conference in the States where Al Gore was presenting. He was encouraging the US industry to get on with converting the rest of the suites because he thought it was so important for the environment and conservation.

With respect to specific aspects of the bill, I just want to make a few comments, and it relates to a lot of the background we've just given you. The new bill is going to require consent for sitting tenants. We think this is one of the biggest mistakes and why I referred to the bill as a large opportunity. Previously, we had contemplated a system that would have allowed an owner to unilaterally convert under some rules that we would have hoped would have been reasonable. By requiring consent, it's going to take decades before we're able to ever convert the existing stock. It's incredibly inefficient and it's expensive. You have to invest all this infrastructure and then wait decades for a turnover to happen before you can recoup on the infrastructure. It's an unfortunate process to set up to make this happen. It means high-income users are never going to consent to conversion, and they are the ones we need to expose to energy costs. They're the ones who create the problem, and we're never going to get at them. So that's unfortunate.

1550

The second comment is with respect to energy efficiency standards. These don't exist anywhere else in the world in this context, so Ontario is unique in its desire to put a whole bunch of new regulations around this process of a tenant coming in to rent an apartment and a whole bunch of new regulations about the suite and disclosure to the tenants. If you really want to put something in here, perhaps you should limit it to fridges or something like that. But really, you shouldn't have anything, because it hasn't been required in the past and we don't think it's required now.

With respect to disclosure to sitting tenants, we support disclosure to sitting tenants. It's something quite different if you're going to convert a sitting tenant from bulk billing to individual billing versus if you have a new tenant coming in. Having a new tenant coming in has been going on forever. If you're going to convert, we support a system of rigorous disclosure, where they're given a lot of details about what's going to happen in the process. We don't have an issue with that. We left you some suggestions here.

However, we're moving to this new context, and because tenant consent is now going to be required under your proposed legislation, your proposed regulatory scheme hasn't kept pace. We don't think there's any requirement to disclose the method of calculating the rent reduction to a sitting tenant if you have to get their consent before you can convert them. The regulatory thinking hasn't caught up with this new change that you've made to require the consent of the tenant. You don't need a whole bunch of rules about how you calculate the rent reduction; if the tenant has this consent mechanism, you should, as a landlord, be able to just put a number in front of them, and then they can either accept or reject whether they want to convert. It's not going to happen much anyway under your proposed scheme because of this requirement for consent.

There's another issue that we're quite concerned about: that tenants should be able to revise the agreement shortly thereafter. It's bad enough that you have to invest in all this infrastructure and wait decades before you might recoup on the infrastructure, but you're going to propose a scheme where the tenant can take you to the tribunal and possibly revise the rent reduction they consented to. Again, we don't think this is in keeping with the direction you've taken to require consent. This doesn't make sense. We're disclosing to the tenant up front what the rent reduction is going to be, and we don't know why they're going back to the tribunal to dispute the rent reduction. You're giving this tenant a powerful tool, which we don't think you should—it's a mistake—of consent.

With respect to disclosure to prospective tenants, this is where we think you don't really need to do anything. You're overreacting. We've been doing this for decades in the province without issue, you haven't been hearing about it, and you're setting up a whole bunch of new regulations. The thing you should think about, if you want to promote this, is that when you put too many regulations in place, you're actually penalizing people who are going to individually bill. The message you're sending to our industry is: "If you individually bill, if you move from bulk billing to individual billing, we're going to penalize you with a whole bunch of new regulations, new risks and possible applications to the tribunal." What you're saying to people is: "Don't do it." So we think you're going too far in that respect.

There also is contemplation of disclosing the previous tenant's consumption in the bill. I showed you data earlier, and one of the reasons I showed you was the huge, massive variance in consumption in identical suites. If you require us to disclose the previous tenant's consumption, you are giving misleading information to the incoming tenant. We think you're making a mistake by going in this direction and we hope you will look to fix that up as you consider the legislation. Also, there are privacy concerns from our perspective, disclosing the previous tenant's consumption to the incoming tenants. That's something you may want to think about.

The Vice-Chair (Ms. Helena Jaczek): You have just one minute left.

Mr. Vincent Brescia: Okay. Another thing is, we'd like you to consider grandfathering the existing buildings. As I said, we haven't seen issues, and it would be great if you'd consider grandfathering those that have been built for decades now.

Thank you for your kind attention today.

The Vice-Chair (Ms. Helena Jaczek): Thank you so much. Turning to the official opposition, Mr. Yakabuski.

Mr. John Yakabuski: It's almost comical, sometimes, but I suppose they assume in this government that if someone buys a successful business, regardless of how they conduct business, they'll be successful because it was successful before. That's using the same logic as needing to know what the previous tenant's consumption was. It has everything to do with the behaviour of one tenant versus the behaviour of another. The unit itself doesn't use the power; it's the choices of the person. Obviously, there are some things that cannot be affected.

I live in an apartment building now that is bulk-metered. I used to have one—I don't live there, but I had it—that I was metered on individually. You pay attention to that. I don't use a lot of power because I'm not here that much, and I don't cook when I'm down here. So I'm not going to affect my power very much, but people who have a family in an apartment—their choices will affect the power in the building.

I appreciate all of the things that you brought forward here today, Vince and Mike, to give the government some food for thought with respect to how they might amend this and make it better. There's no question whatsoever: It looks like they kind of want to do it, but they really don't want to make it happen. If you're going to have individuals responsible for their consumption of electricity, then you have to have the enabling legislation, and it looks like we're falling short of the mark here. Would you not agree?

Mr. Vincent Brescia: I agree with you. I think we can do better. The evidence is irrefutable. This is an opportunity for the province to save the equivalent of a small coal plant, if you will, if we do this across the entire sector. We should be more proactive, I think, in how we approach it, and not so hesitant.

Mr. John Yakabuski: They'd love to take credit for it; I know that.

Mr. Vincent Brescia: We certainly would welcome an approach that facilitated it more than we're seeing today. We're encouraged by the direction to try and make it happen. We do think it can be better in the legislation.

Mr. John Yakabuski: Thank you very much.

The Vice-Chair (Ms. Helena Jaczek): Mr. Tabuns?

Mr. Peter Tabuns: Thank you for the presentation. I know you won't be surprised that I disagree very fundamentally with what you have to say today. My experience as a city councillor was in dealing with commercial buildings where the tenants paid the electricity and other energy bills, and the landlords didn't. But the landlords had no incentive to invest in upgrading the energy efficiency of the buildings because in the end, they didn't realize the savings. The tenants weren't interested in in-

vesting because they didn't own the buildings. In the end, they would be gone.

Having been a property manager, I know that people who have very low incomes will be forced to cut corners so that they can continue to pay their rent, pay for groceries. So what we have is a situation where tenants will have to cut corners on the heating in their units. In the summer, they'll have to cut corners on cooling those units.

I think that that's the wrong direction. I think, in fact, the question really is making sure that buildings are highly efficient, with very sophisticated building envelopes, protection from sun so you don't get overheating in units. In the end, if we're going to invest in buildings—and putting in sub-metering is an investment—that's where we have to go.

I don't have a question for you, but I have to say that I think the direction you're going in is going to yield small savings compared to the savings that would be available through a program of capital investment on the part of landlords.

The Vice-Chair (Ms. Helena Jaczek): Mr. Levac?

Mr. Dave Levac: I don't know if you want to respond or not.

Mr. Vincent Brescia: I'd love a chance to respond. On page 3 of the slides we gave you, the data we've given you shows you that it is irrefutable that there are enormous savings, and not that it's a point of debate or that you can disagree with us. You'd have to say that Statistics Canada was wrong in its research that shows that there is massively less consumption in buildings where tenants pay for the electricity. If it really was true that there was going to be more consumption because the landlords don't have incentive to invest, then this data would be wrong and it would be the inverse of what it shows. Do you have any actual data that prove your point?

Mr. Peter Tabuns: I'll tell you, as a property manager dealing with people who said, "I can't afford to pay my rent to you because I need to keep the heat on," I have no doubt that there are people who cut the heat in their units quite dramatically to make sure they can pay their bills. I don't think there's any doubt about that. The question is, at what human cost? And what is the most sensible way to make the investment? That's the reality.

The other data I can give you: As I said, as a city councillor dealing with situations where the owner of the capital was not the person who paid for the energy—and that's a simple reality—it is very difficult for a building owner to have an interest in going back and fixing the windows, insulating the walls, making sure that they have the highest efficiency in terms of the appliances. That's a reality.

People who are poor and desperate and need to eat, who have a sub-meter, I have no doubt, will cut their energy use. They will make sure they can eat and they will make sure they pay their rent so they don't get evicted. But it is a very brutal way to get to a green world.

There's a very different approach that one can have. What you've brought forward is one that's going to mean more people evicted, more kids cold and more kids hungry. I've seen it; that's the reality.

The Vice-Chair (Ms. Helena Jaczek): Mr. Levac?
1600

Mr. Dave Levac: And on that note, I'll keep mine short, because I know that we've gone a little over time. Thanks for the presentation. I was just curious about the comment that you made about the tenant-metered—I, too, was aware that we were into that situation. It's not all Toronto-centric; there's a very vast amount of tenant-paid bills outside of Toronto, and I want to thank you for bringing that to our attention.

I also want to thank you for the deputation and indication of your concerns. The staff are here to take care of this, and if there is any other deputation that you have in writing that would be presented, because I think you said that this was a slide deck, versus specifics to the bill—if you've got those, we'd gladly receive them.

Mr. Vincent Brescia: We'd be happy to send that in to you.

Mr. Dave Levac: Please. We try not, on this side, to make points to make government look bad. It's just that we're trying to make the bill better.

Mr. Vincent Brescia: Thank you.

The Vice-Chair (Ms. Helena Jaczek): Thank you very much.

DIRECT ENERGY

The Vice-Chair (Ms. Helena Jaczek): Next we have Direct Energy: Adèle Malo, executive vice-president and general counsel. Please make yourself comfortable. As you know, you have 10 minutes. At the nine-minute mark, if you're there, I'll let you know, and then we'll have questions.

Ms. Adèle Malo: Thank you very much. I'd first like to apologize for my voice; I've had this for about 10 days now and I'll attempt to make sure that I keep it all to myself.

I would like to thank you for this opportunity and I'd like to thank you for your attention because, as Mr. Levac has said, we're here to listen to each other to make the bill better, or as good as it can be under the circumstances.

So what I'd like to do in these few minutes that I have is tell you a little bit about Direct Energy and tell you a little bit about how we fit into the Ontario framework and what our thoughts are on the ECPA and its implications for consumers and for business folks in the province.

Direct Energy is a wholly owned subsidiary of an extremely large UK-based company called Centrica, which you may have heard of. They came to Ontario in August 2000 and had all of North America to choose from, but chose Ontario for where they were going to build their business, keep their head office and have a fairly significant number of employees.

We've invested \$5 billion over the years in North America, and in Ontario we service 40% of all households. We have approximately 550,000 gas customers, 150,000 electricity customers, and a very large number of service customers as well.

The service business, when combined with our energy business, helps people use energy wisely. We have high-efficient HVAC systems—heating, ventilation and air conditioning. We do home energy audits, insulation, and all the sorts of things that the government has indicated it wants people to do in terms of conserving.

We also believe that, in addition to it being the right thing to do, being a good corporate citizen is important, and we spend a fair amount of time, effort and money giving back to the community, which I'm sure is important to each and every one of you in your own constituencies. Whether it's Raising the Roof, Direct in the Community, or the cancer society, we give people time off during their workday to contribute to the charity of their choice because these things matter to us, and it assists in employee engagement matters as well.

I don't know whether you have the material in front of you, but if you do, you'll see on slide 3 that there's a map of North America. You can see there that we are involved in over 30 jurisdictions in North America, whether it's in our commodity business with the gas and electricity contracts or in our services business. Gas and electricity contracts can be sold to small residential consumers or large industrials, so we have a very large suite of customers. They each have individual needs that we try very hard to meet, because there's no point in having an unsustainable business.

We recognize, and you will hear it consistently, that retailers are in support of consumer protection. It would be unfortunate if this became a discussion about whether you were for consumer protection or against consumer protection, because that's not a very sensible conversation to have. If you want to be in business in the long haul, as we clearly are, hurting consumers is not a particularly effective way to make sure that you're in business the year after and the year after.

You can see that we're also in the power generation business. We have gas fields in Alberta. We have wind farms in Texas, and we have gas plants that create electricity in Texas as well.

Generally speaking, this is a very big footprint, but we chose Ontario. This is where our head office is. We employ 2,000 people in the province of Ontario. We have \$172 million in salaries, 500,000 square feet of space, and approximately 1,000 vehicles. These would be automotive sector jobs that we're helping to support by our services industry. Those trucks that you see with the little orange logos that say "Direct Energy," that once you start noticing them are everywhere: That would be us.

So indeed, on slide 4, you'll see we do support consumer protection. We recognize there were problems. It would be naive to say that there were not. When we recognized that there were these problems, that was an

unintended consequence of our business. So we undertook voluntarily, well over a year ago, to introduce many measures that Gord Potter has explained and discussed with you. These were a good-faith attempt to say, "This is not a business that we want to destroy; this is a business that we want to thrive."

So whether it was third party verification, where we have a third party phone a customer while the salesperson is on the doorstep and say, "Do you understand what you've bought? Do you know who these people are? Do you know who they are not?"—there's a very good opportunity, right then and there, to know if there's a salesperson problem, and if it's clear that the person doesn't understand, there is no sale.

We have clear brochures that are not DE-specific, they're energy-retailer-specific in the province of Ontario, and they point people to the OEB website if they've got questions that they feel they want the OEB to answer.

We have plain-language contracts. We really do go out of our way not to mislead people, because it doesn't serve anyone's interests and it increases overhead and costs while you sort those things out. So we do attempt and we will continue to attempt to do all of those things.

We do criminal background checks on every agent who might want to work for us. If there's been any kind of a misdemeanour or problem at all, they are simply not wanted on the voyage.

We clearly support the government in its efforts to make sure that consumers are protected, but we think there is a very good balance that can be reached. We've always wanted to co-operate with the government in these efforts, but we think you can have a friendly business environment where business can thrive and consumers are taken care of. That's our goal, to be honest.

Gord went through the issues that the ECPA presents for us that we think could be revised to get everybody what they want and make sure consumers are protected. While there are several, the six main ones would be, first of all, the potential retroactive application of this act. For contracts that are already in place, we've gone out and bought power or gas five years ahead to back those contracts up. To change that partway through a contract would leave us in a very difficult financial position. So we would want it to be very clear where it's prospective and where it's retrospective, and that we give very careful thought to each one of those things, as opposed to interrupting a contract. As long as everybody has lived up to both sides and the rights and obligations have been maintained, we think the integrity of that contract should be maintained.

That feeds a little bit into the second issue that we're concerned about, which is the cancellation provision which would allow people to cancel at any time, for any reason, with some nominal capped fee that the OEB or someone would place on it. That goes to the fact that we will have hedged those contracts out, and that could be extremely damaging to our business if the customer base was told that for \$10 they could cancel their contracts for any reason whatever. As it is, we have policies where

people who are seniors, who have English as a second language or any difficulties at all in the contracting process—we let those people out of their contracts now. But that's different than saying the entire customer base, all million customers, could leave immediately.

The third area of concern for us is the automatic renewal on gas contracts. We think this is a potential area where there's good conversation we could have about what makes sense, as opposed to simply no automatic renewals, which is quite common in a lot of industries: telecom, credit card. But if we were to put customers on to a month-to-month where they could cancel at no cost at that point with a renewal price that's at the same price or lower than the contract price they were in, we believe that would protect consumers' interests effectively.

The fourth area of concern would be the overriding of the E-Commerce Act, where verbal or oral consent over the telephone isn't acceptable. I think this is an area where it's actually a very effective tool right now. People who do not want to be called can get on the federally regulated do-not-call list, so they're not getting unwanted phone calls. They are fully taped from start to finish, so if there's a problem, there's a history. The cooling-off period for customers, the 10-day period, is not touched at all. They've got 10 days: If they've entered a contract over the telephone they just decide they don't want, they don't need to. The telephone calls are all scripted, they're regulated, they're as clear as the regulator wants them to be, and we would be fully supportive of obviously continuing in that vein.

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The Vice-Chair (Ms. Helena Jaczek): One minute left.

Ms. Adèle Malo: Thank you. Third party verification: You've heard about that—on the doorstep. You wouldn't want a salesperson going out for 10 days, 20 days or 30 days; if they weren't clear about what they were selling, the third party verification at that moment will tell you if you've got an issue, and you can deal with it right away. We have found, in all of the pilots that we do, that the complaint numbers dropped dramatically when you've got a third party verification at the doorstep. It's got to be timely.

Finally, the director and officer liability is of course a concern, because most thresholds indicate that you should take all reasonable measures to make sure that certain things happen. We would want to do that—we do do that—but to be held to a threshold that says you will ensure compliance with the act we feel is perhaps a little excessive in terms of the penalties that might be assessed against officers and directors of a company that's trying to do, and does do, the right thing.

In my 30 remaining seconds, I just wanted to say what you have heard, which is that we are a viable industry that employs a lot of people, tries to do the right thing, wants to do the right thing. We think the act can do the right thing. We think that it is perhaps a bit overzealous, and would in many respects signal the demise of the retailer industry. I'm not sure, but I believe that that is an unintended consequence.

The Vice-Chair (Ms. Helena Jaczek): Thank you very much. Mr. Tabuns.

Mr. Peter Tabuns: Thank you for taking the time to come and make the presentation. Why do you think this act would signal the demise of your industry?

Ms. Adèle Malo: We have several sales channels that we can use, and to be honest, with the costs that this might build into either the door-to-door—telesales would be no more, essentially, because oral consents are not allowed. We think that, really, the channel that would be left to us would be the Web channel. We do have Web channel retailers out there, but they have a very, very tiny customer base.

The energy industry in Ontario, as you can appreciate more than many, I'm sure, is a very complicated one, and when someone's on your doorstep trying to explain what this complicated universe is all about, it's a much more effective way to convey what your product offering is. We think that it would just build an enormous amount of cost into a system where the margins are pretty skinny and would make it almost impossible to do business in Ontario.

Mr. Peter Tabuns: Thank you.

The Vice-Chair (Ms. Helena Jaczek): To the government side. Mr. Levac.

Mr. Dave Levac: Thanks very much for the presentation, Adèle. Two quick questions I do have for you: I think I heard that you are supportive of some of the process that we've gone through in terms of accepting a bill and that you'd like to work with us to find a good consumer protection component to that, but I didn't actually hear that. What I thought I started to read in here was that, "We do it ourselves, so don't do a bill." I want to rule that out.

Ms. Adèle Malo: To be honest, we could, but if a bill is the way the government wants to go—

Mr. Dave Levac: Yes, but there are an awful lot of companies in all different sectors—

Ms. Adèle Malo: No, I agree.

Mr. Dave Levac: —that say, "We're self-policing. We can do it," and we end up doing legislation anyway.

Ms. Adèle Malo: This bill came out, though, without any—to the best of my knowledge, there was very minimal, if any, consultation. So what we're saying now is, we've got the framework that you've put forward and we'd like to work with you.

Mr. Dave Levac: So you're into that?

Ms. Adèle Malo: Sure.

Mr. Dave Levac: And the comment that I made earlier is that there will be good discussion on the regulatory stream as well.

Ms. Adèle Malo: Right, which is very good.

Mr. Dave Levac: Help me very quickly with the officer/director liability, because, quite frankly, did not the industry bring that onto itself when it basically put its hands up and said, "Don't come to us. They're actually not contracted to us. They're independent people who are selling at the door, so don't talk to us"?

Ms. Adèle Malo: That may be what you heard from some, but even though they're third parties, if you've hired them to represent you, you've got a responsibility to make sure that you have processes in place—audits, monitoring, censures, training—to make sure that these things don't happen. But as people who deal with the public every day, which is what you do, I'm sure sometimes things don't always go as planned. But if you've really worked hard—and you must be held to that threshold, you must have the processes, the audits, the monitoring, the penalties, the training. If you've done all those things and there's a problem, it seems excessive to go to the officers and directors and say, "I'm going to put a lien on your house," which is essentially—we think a threshold is a very good thing. It's just a very high threshold when compared to most of the Ontario Business Corporations Act sorts of thresholds.

Mr. Dave Levac: I'll leave it at that. I've got another one, but I won't—

The Vice-Chair (Ms. Helena Jaczek): Thank you. Mr. Yakabuski.

Mr. John Yakabuski: Thank you, Adèle, for coming to visit us this afternoon.

I think one thing that we all agreed on prior to this is that while we accept the industry was moving, the consumer demanded something on the part of the government that was more definitive. This is certainly something that is moving in that direction. I'll separate the bill into a few parts, because part of this bill has absolutely nothing to do with energy retailers visiting people at the door.

Based on the submissions earlier today from other energy retailers, and there could be other ones coming, you all share that consumer protection is something that you very much support. I guess my question would be, if the amendments that you're proposing were to be enacted in an amended version of the bill, the concern is, would we be watering down consumer protection? Because consumer protection is important. Could we offer the same amount of consumer protection and still allow the whole issue surrounding the ability to actually function to be somewhat less cumbersome or even, in your own words, almost sounding the death knell for an industry? Would these amendments still allow us to have that same amount of consumer protection that the bill is intended to bring?

Ms. Adèle Malo: We believe that, with the amendments, you'd get what the government desires and what everybody desires, which is good consumer protection, in an extremely robust way. It would be sort of an 11 out of 10 that we believe you could get out of this.

It's also very important that if there are problems, we have a strong system, a strong regulator, a strong backbone that says, "That's just not acceptable," so that all retailers must do this.

Mr. John Yakabuski: Have you got any data since you've gone to this third party verification at the door? I know you said your problems have been vastly reduced.

Have you got any data that can say, "It was reduced from this to this"?

Ms. Adèle Malo: We do, in fact. We've run quite a few studies on our pilots. In Ontario alone, in January 2009—we started our third party verification in December, and in January we had what you would call 244 complaints. Now, that's on a base of about 750,000 customers. In December 2009, that was 89.

Mr. John Yakabuski: Eighty-nine?

Ms. Adèle Malo: Eighty-nine. We've got great graphs—if you'd like to see them, we'd be happy to show them to you—where literally it just plummets. It's an extremely effective way to make sure the customers understand that the agent has behaved and you've got a sale that they want.

Mr. John Yakabuski: But we also have to have something that's standard across the industry in the way that we—

Ms. Adèle Malo: That would be effective, yes.

Mr. John Yakabuski: Thank you very much. I appreciate that.

The Vice-Chair (Ms. Helena Jaczek): Thank you very much.

LOW-INCOME ENERGY NETWORK

The Vice-Chair (Ms. Helena Jaczek): Now we have the Low-Income Energy Network: Zee Bhanji, coordinator. She's accompanied by Mary Todorow, steering committee member, and Jennifer Lopinski. Just make yourselves comfortable. As you know, you have 10 minutes. At around nine minutes I'll give you a warning, and that will leave us time for questions from all three parties. So, if you'd like to proceed.

Ms. Zee Bhanji: Good afternoon to the Chair and members of the committee. My name is Zee Bhanji. I am coordinator of the Low-Income Energy Network. LIEN is a group of environmental, anti-poverty and affordable housing advocates who joined together in early 2004 to raise awareness of the impact of rising energy prices on low-income households and to suggest solutions to aid these vulnerable consumers. Our approach places the greatest emphasis on reducing energy consumption and costs for those who are least able to afford higher energy prices and who face barriers to full participation in energy conservation initiatives.

I am joined today by my colleagues Mary Todorow, a research and policy analyst with the Advocacy Centre for Tenants Ontario, and Jennifer Lopinski, program administrator of the emergency home energy and resource program at A Place Called Home. Both ACTO and A Place Called Home are LIEN steering committee members.

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To address energy poverty, LIEN has proposed a low-income energy conservation and assistance strategy, which is outlined in the pyramid in one of your handouts in the back. That strategy consists of targeted low-income energy conservation and efficiency programs at no cost

to recipients; extensive consumer education about energy conservation, and specific low-income consumer protection measures; a permanent low-income rate assistance program; and adequate emergency energy assistance to help households in short-term crisis.

As we highlight our concerns today, it is important to keep in mind that there is currently no province-wide multi-fuel low-income energy program in place today. LIEN is eagerly awaiting the provincial government's plan to develop a province-wide integrated program for low-income energy consumers. We're also hoping that the principles agreed to and the Ontario Energy Board's consultation on the low-income energy assistance program will form the basis of the government's program.

If the suite-metering initiative in the multi-residential rental sector goes forward, the key to maximizing energy use reductions and protecting housing affordability and housing security for tenants will be a permanent rate assistance program and funding incentives for energy retrofits in the sector. Without low-income energy conservation programs for multi-family buildings, tenants will be facing even costlier above-guideline rent increases for the capital expenditures spent on the retrofits. My colleague Mary Todorow will talk more about this later.

Bill 235 contains provisions that can impact, both positively and negatively, on low-income energy consumers, and that could potentially work at cross-purposes with the government's efforts to reduce energy demand and greenhouse gas emissions. LIEN wishes to highlight the following specific concerns with Bill 235. I'll pass it on to Jennifer.

Ms. Jennifer Lopinski: The first point I'd like to discuss is the termination of energy retail contracts with no penalty fee for low-income consumers. LIEN recommends that if a low-income consumer has signed a retail contract for gas or electricity without fully understanding the financial implications and pays more for the commodity than that charged by the gas or electricity distributor, the consumer should be able to cancel the contract without paying a penalty fee for early termination. In addition, LIEN recommends that there should be an exemption for low-income households from penalty fees for early termination of a gas or electricity retail contract.

The second point I'd like to discuss is a winter disconnection moratorium for low-income consumers. Unaffordable home energy bills leading to the disconnection of utility services pose serious public health and safety risks for low-income households. Disconnection of utility services is particularly devastating for infants, the elderly, and those who are ill or disabled. Under Bill 235, there are provisions for regulations that would prohibit electricity and gas service shut-offs to a consumer or a member of a class of consumers. LIEN recommends that priority be given to issuing a regulation that would ban the disconnection of electricity or gas service to low-income households and households where infants, persons over 65 years of age, or seriously

ill/medically fragile persons reside during the period of November 1 to May 1. This winter or heating season disconnection moratorium should also prohibit the use of a load limiter or other device that limits or interrupts electricity service in any way. In addition, LIEN recommends that the government consider a similar disconnection moratorium for the cooling season.

Thank you for the opportunity to share our concerns with the committee today. I will now hand over to my colleague Mary Todorow.

Ms. Mary Todorow: Hello.

Security deposit waiver for low-income consumers: LIEN supports the mandatory exemption for low-income households from consumer security deposit requirements which can adversely impact, or even exclude, these households from accessing and maintaining gas or electricity service. As part of LEAP, the OEB was proposing code amendments that would have prohibited electricity distributors from requesting a security deposit from certain eligible low-income customers and that would have allowed other eligible low-income customers to pay a security deposit in more affordable instalment payments over a period of at least 12 months.

Under Bill 235, there is regulation-making authority to set security deposit criteria for gas and electricity distributors for prescribed consumers or a member of a prescribed class of consumers. LIEN recommends that priority be given to issuing a regulation that provides for mandatory exemptions from gas and electricity security deposit requirements for low-income consumers. Currently, electricity distributors have the discretionary authority to waive security deposit requirements for a customer or future customer. To date, the OEB has not codified security deposit rules for gas distributors who also have the discretion to waive security deposit requirements.

Suite metering of electricity service in the multi-residential rental sector: The majority of low-income households in Ontario are tenants who reside in multi-residential buildings and currently pay for their utilities in their monthly rent. Bill 235 sets up the framework for the provincial government to expand its smart meter initiative to the multi-residential sector and for landlords to proceed with the installation of sub-meters or meters in their buildings in order to transfer the responsibility for paying for in-suite electricity use to tenants directly and separately from rent.

LIEN has continuously questioned whether smart meters and suite metering are the most effective, cost-efficient or fair way to reduce energy use in the multi-residential rental sector on an ongoing basis, particularly in view of the split incentive between landlords and tenants. "Split incentive" refers to the different interests of the owner/landlord and the resident. Simply put, the landlord's purpose is to make a profit and minimize costs, while the tenant seeks a safe, comfortable and affordable home.

We have raised concerns about the potential erosion of housing affordability for low-income tenants who will be

disproportionately affected by rising and volatile electricity costs and who have the least capacity to respond to time-of-use pricing by shifting their energy use. These households are the least likely to have washing machines, dryers or dishwashers in their homes, the appliances that consumers are expected to run in off-peak periods in order to respond to price signals.

It is impossible to assess whether the suite-metering provisions in Bill 235 for fair rent reductions, adequate tenant information packages, and landlords' obligations to meet certain energy conservation and efficiency standards will protect tenants, because those measures are to be set out in regulations which have yet to be drafted. We haven't seen them yet. In addition, under Bill 235, the onus remains on tenants to enforce landlords' compliance with the suite-metering requirements.

LIEN requests that the Ontario government thoroughly review whether suite metering can meet the energy conservation, peak demand reduction and GHG emission reduction goals expected from the multi-residential rental sector. At the same time, it should undertake neutral studies on how optimal energy use reductions in this sector can be best achieved without increasing financial burdens on tenants. Such actions are essential and prudent in order to avoid proceeding with what could prove to be an energy conservation strategy that does not achieve savings in the low-income sector due to the specific circumstances of these energy consumers—their demographics: who you're dealing with, and their ability to respond.

Those are my comments. We thank you for paying attention and considering what we've raised before you.

I do have to congratulate the government on moving forward and addressing issues that have occurred because of what was happening in suite metering in the multi-residential rental sector. There really was a vacuum in terms of rules and guidelines. We're happy to see that you're trying to deal with that.

On the energy retail side, our legal clinics—I'm a research and policy analyst with the Advocacy Centre for Tenants Ontario. Our legal clinics spend a lot of time trying to get people who are on OW and ODSP out of contracts where they just didn't understand what they were getting into.

The Vice-Chair (Ms. Helena Jaczek): Thank you very much. We'll start with the government side. Mr. Levac.

Mr. Dave Levac: Ladies, thank you very much for your presentation. I appreciate the position that you've taken.

It sounded to me like the concern that you raise is that it could be positive or negative, depending on the direction we end up with, whether or not we put amendments in. Have you listed the amendments? I've seen your program. Have you a list of them?

Ms. Mary Todorow: A lot of it is dealing with the regulations, and—

Mr. Dave Levac: Yes, and there's going to be a consultation process for the regulatory stream for everybody to contribute to that, so that will get addressed.

What do you say to the providers that expressed a concern today and before today that some tenants have a propensity to say, "If you can't kick me out, then I don't have to pay. I don't pay, so you can't kick me out"—the carrot-and-stick kind of thing? They need to have some kind of leverage. If that leverage is taken away, the cancellation of the contracts and stuff like that—

Ms. Mary Todorow: I'm not sure I understand your question.

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Mr. Dave Levac: To cut off service. You were referencing—

Ms. Mary Todorow: Oh, disconnection. You mean the moratorium?

Mr. Dave Levac: Correct. Their concern, they laid it out, is that we take away—

Ms. Mary Todorow: Oh, you mean they have an unpaid bill?

Mr. Dave Levac: Yeah.

Ms. Mary Todorow: Do you know what? This is about a package. It's about a package. You can't look at this stuff piecemeal. The whole point is, what you want to do is make sure people are the greenest consumers or energy as possible. A late payment fee on someone who's already payment-troubled, who doesn't have money to pay the bill, doesn't accomplish them paying the bill. It's not going to work. Right?

Mr. Dave Levac: But I guess I have to be very succinct. That part is negotiable, and the wording that you used is basically saying that it's up to them whether or not they discuss this. You're saying that it should be—

Ms. Mary Todorow: The moratorium or the security deposit?

Mr. Dave Levac: I'm adding them both together. What the industry is saying is that you're removing the reason why somebody would say, "Then, okay; I will pay my bill," or, "I will behave myself," or, "I will"—

Ms. Mary Todorow: About the moratorium?

Mr. Dave Levac: Yeah.

Ms. Mary Todorow: The moratorium is about low-income consumers; it's not everybody. The thing is, the government has said, "We know there should be an integrated program in place." We actually want to prevent disconnections from happening. When someone has already gotten to the disconnection procedure, we've failed. We have failed that person.

Mr. Dave Levac: I understand what you're saying, and the companies are saying somewhat of the same thing because they're saying—

Ms. Mary Todorow: People maybe are thinking back to what happened when there was the moratorium when they went back to—basically there was a failure when they opened up the market. November 11, 2002, I think it was, when they put a halt on it. They capped the price of electricity and said, "Rebates are going out. We're not going to cancel people's electricity service if they haven't paid by March 31." There were problems there because the LDCs were on the hook for buying electricity. I know this happened in a lot of university

towns as students decided not to pay the bill because it was a free ride.

We're not talking about that; we're talking about a whole package of protections for people who are least able to afford their energy and shelter costs and making sure that we collectively are going to make sure that they can participate in the culture of conservation and afford their electricity.

There were comments earlier today that we can't have low-income rate assistance programs because it's going to cost ratepayers. We were involved in a four-day hearing at the OEB about this integrated program. These types of rate assistance programs are operating in the States, and guess what? They save money. They save costs down there by implementing it.

The Vice-Chair (Ms. Helena Jaczek): Thank you. Now to Mr. Yakabuski.

Mr. John Yakabuski: Thank you very much for joining us today. I want to talk about the sub-metering/suite-metering issue. My friend Peter has said that there is no incentive for a landlord to improve the accommodations if the unit is being individually metered for electricity. If there's no incentive to improve the accommodations in the building or whatever on individual metering, there's no real incentive to improve it under bulk metering either except that the total electricity use of that building is most assuredly going to be higher because the landlord is not going to be paying for the electricity. That electricity is going to be passed on to the tenants, whether it's in one form or another, if it's equal billing or whatever. The only thing that really changes is the individual's bill for electricity, which hurts the low-income consumer and the low-electricity consumer because they're subsidizing the high-electricity consumer. There's no incentive for the landlord to improve the building or the accommodations under either scenario. They're only the agent to pay the bill, but all of those costs—they're not sucking it up; they're passing them on. I'm trying to understand how it would make a difference to the individuals if each suite was metered other than the fact that they'd be very, very aware of their own electricity use.

Ms. Mary Todorow: I think you can look at inventive ways of doing that. Sharing the energy savings would be one way to do it.

Mr. John Yakabuski: Could you expand on that?

Ms. Mary Todorow: Yes. When the landlords apply for above-guideline rent increases for the energy and water conservation retrofits, they are allowed to put it forward. In fact, they're obligated to do it. They can pass that on to the tenants. It's going to be capped at a 3% increase over three years; they're going to be filing for that. If there are public multi-residential conservation programs, they have to deduct those public funds from the AGRIs, so that means there will be less of a total amount of increase that's going to be passed on to the tenants.

So the tenants will be paying until the useful life of that retrofit expires. There's a schedule for that in the

Residential Tenancies Act. During that whole time period, the energy costs are going to go down. Guess who has the savings? The landlord. What if they shared those savings with the tenants? What would be wrong with that? Because the tenants are paying for those retrofits and they're not getting any of the savings.

Mr. John Yakabuski: Valid point.

The Vice-Chair (Ms. Helena Jaczek): Mr. Tabuns?

Mr. Peter Tabuns: Thank you for coming down and making a presentation today.

The whole question of energy marketing contracts and the difficulties that people have signing up when they're not fully aware of the impact: Could you speak a bit about some of the cases that people have had to deal with?

Ms. Jennifer Lopinski: Absolutely. I've had a large number of clients, actually in the last year, come into my office and express to me that they can't understand why their electricity bill—and sometimes their gas bill too—is so much higher. I review their bills and I see that they've signed up with a retailer. I question them, and they say, "Yes, somebody did come, and yes, I signed a contract." I say, "Did you know at what rate you signed up for and for what length of time?" They say, "No. They just told me that I would save money, and that I had to hurry up and sign a contract; otherwise, I would be facing much-increased costs." Honestly, this is a common, everyday experience in my office, because I'm a direct service provider.

It's very difficult to get out of these contracts. I'm successful at getting some clients who are on Ontario Works or ODSP off them; however, for the average low-income earner it's almost impossible. I have to involve my local MPP to help me try to get the consumer off the contract. It's not enough, I guess, to say that the increased costs are causing undue financial hardship. So it's a challenge.

I had one client where it took two months just to have them finally say, "Yes, we'll remove you from the contract without penalty." It still took time—at least another month—before that person was actually taken off the roster, let's say off Hydro One, for instance. They were finally released. All that time was lost and that consumer paid a higher amount because they didn't realize.

I really feel that the average consumer does not understand what they're signing with these contracts. They need to know at the time of signing, if they're going to sign, what the main distributor is offering and what the retailer is offering. It has to be very clear. But I personally believe that there are so many instances where someone comes to a senior citizen and tells them that they're going to save money, and it sounds like such a good deal. They believe it. They just believe it, and they don't question it. They sign up. Then when they realize, it's so difficult for them to get out of those contracts. I'll tell you, it does put people in very tough positions. I've heard you speaking earlier today. It does force people to make a decision as to whether they're going to get some

groceries in the house this week or pay their hydro bill, because if they don't, they're going to be facing a disconnection. It's concerning to me.

I really am impressed and relieved at the prospect of these new changes, this new Bill 235. I'm really excited, because I think it will amount to a lot fewer low-income earners and vulnerable consumers—there will be more opportunity for them to be better educated, and if they do make a mistake, there will perhaps be a better chance for them to get out of something that they didn't realize they were getting themselves into.

The Vice-Chair (Ms. Helena Jaczek): Thank you for your deputation.

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MR. MAURICE McMILLAN

The Vice-Chair (Ms. Helena Jaczek): Next we have Maurice McMillan, who is an Orillia city councillor. Mr. McMillan, are you accompanied by somebody as well?

Mr. Maurice McMillan: My friend Don. He used to work in the power business—Don Fenwick.

The Vice-Chair (Ms. Helena Jaczek): Okay. We'll ask you to identify yourselves just for Hansard, right at the beginning of your presentation. As you know, you have 10 minutes, and I'll let you know at the nine-minute mark so we can have some time for questions. Please proceed.

Mr. Maurice McMillan: Thank you for this opportunity to present a position on electricity retailers and Bill 235.

My name is Maurice McMillan. I am a member of the Orillia city council and someone with significant relevant experience. I have worked in power generation for 36 years. I actively opposed the sale of Hydro One to the United States in 2002. I worked with the Ontario Electricity Coalition informing the public of the risks of privatization, deregulation and electricity retailers. That's why we're here today.

I would like to note that in 1996, the head of Orillia Water, Light and Power warned the city of Orillia about the risks of electricity marketers.

In 2008, at the AMO conference in Ottawa, I put a question to Energy Minister George Smitherman. My question concerned the licensing of electricity marketers and is unfortunately still relevant today.

I pointed out that in 2002, Ontario Energy Board chair Floyd Laughren reported that 23% of households had signed up with electricity marketers. In 2002, this amounted to millions of dollars leaving the residents of Ontario. These marketers have continued since then to sign people up. This most deeply impacts our most vulnerable citizens: people living on fixed incomes, seniors and single parents, all paying out much-needed dollars when there's no benefit to be gained from doing so.

When the electricity retail sector was shut down in October 2002, the question I asked Mr. Smitherman was that electricity marketers' licences should have been suspended immediately. It is astonishing to me that they

have been permitted to continue making a profit without providing a service. I asked, "Why weren't the licences of these electricity marketers suspended the moment you took power, and when will you put an end to this unethical behaviour?" He failed to answer that question.

I have a brochure from our own power company in the city of Orillia. You can refer to that as you go through here.

Point one: There are 1,855 homes signed up to retail hydro contracts in Orillia. This presently costs the users about \$75 each, and all together there's about \$130,000 a month leaving people's pockets in Orillia. I don't see how Bill 235 actually deals with the issue of signed five-year power contracts.

Point two, a few pages over: The total average power bill in Orillia was \$72 a month in 2001. On the new power rate application, \$13 covers service charges, power cost accounts for \$30, and debt, maintenance etc. make up the remaining \$30-a-month charge. I would like to note that 3 cents a kilowatt hour for a 1,000-kilowatt average home is a cost of electricity in 2001 of \$1 a day. Competition was going to drive that cheaper, right? A dollar a day kept our households economically successful, with minimal social burden, in 2001. The current Orillia power rate contract is up to 13 cents a kilowatt hour, or about \$4 a day, and has been for most of 2009.

Point three: Typically, electrically heated homes use 2,000 kilowatts a month, doubling the retailer charge to \$150 per home, with a total bill now of \$376 year-round.

Point four: Ontario's social housing stock is generally old and built to lower standards with electric heat. Therefore, there is more likelihood that the poor will be impacted with higher cost.

I commend the efforts of Bill 235 to increase controls and restrictions to protect consumers, but these professional retail hydro salesmen—and gas salesmen, by the way—will continue to be a challenge and a burden to Ontario. Orillia's city council position is that retail licenses must be removed. Orillia can't do it, for I tried numerous times in different venues with efforts through Mr. Smitherman, the Minister of Energy.

If you go down through the pages, I also pointed out in 2008 with a draft paper on poverty reduction that these retail contracts are infringing on people's ability to afford power.

Of course, on the last page, I was on my way down. A couple of days ago I was starting—I didn't get too much time to put too much together. There's a letter in the paper here. A wife talks about her husband. He's 85 years old. Apparently, to get out of their contract now it's \$1,283. So obviously, these people are in trouble with electricity retailers. They do not understand the energy sector at all, especially the poor and senior citizens and the like.

I'll take any questions you have or any opinions you may have.

The Vice-Chair (Ms. Helena Jaczek): We have quite a bit of time left for questions, and we are going to be starting with the opposition. Mr. Yakabuski.

Mr. John Yakabuski: Thank you very much, Maurice, for joining us today. What's your friend's name?

Mr. Maurice McMillan: Don Fenwick. It was Don and I who predicted the blackout in 2002. It happened in 2003.

Mr. John Yakabuski: Thank you very much, Don.

It would clearly be your position that the business of selling electricity contracts should be outright banned. Is that correct?

Mr. Maurice McMillan: That would be the shortest cut you could do to alleviate the people of Ontario. If you take the numbers here of Mr. Floyd Laughren, there were 1,100,000 homes in Ontario in 2002 paying electricity contracts. If you multiply that by 75, you'll find that's about \$80 million a month leaving the pockets of people in Ontario, if those numbers are true today.

Mr. John Yakabuski: On the issue of seniors, I believe I heard submissions from energy retailers today that they have provisions that low-income seniors who are affected by an energy contract—they will cancel it without a fee. I may have misheard that, but I did believe I heard that. I know you're talking about a couple here in Orillia. They were told 1,200-and-some dollars, you said?

Mr. Maurice McMillan: To break the contract. That's what it says in—I didn't contact those people. I deal with electricity retailer contracts and have been doing so for quite a number of years. Even when you try to get a discussion going, you have to get it signed over for me to discuss the contract for the people, which is a lengthy process. Of course, these energy companies don't like to have somebody in that position. Even when we get them off, they're slow to release the people from the contracts. It's just troublesome all the time. The humiliation that people go through, plus the economic cost, are just unbelievable. There's just no peace of mind until they do get rid of them. They feel taken advantage of. But I do get them off sometimes if mum will say, "Dad signed that, and he's marginal," so to speak, which is a tough thing for—

Mr. John Yakabuski: My kids say that about me.

Mr. Maurice McMillan: I've had that said about myself more than once. But anyway, that is true to some degree. I didn't get them all off that way.

Mr. John Yakabuski: I appreciate the work that you do for consumers, and thank you for your submission today.

The Vice-Chair (Ms. Helena Jaczek): Thank you, Mr. Tabuns.

Mr. Peter Tabuns: Maurice, thank you very much for taking the time to come down here today. I'm assuming that for you to come here and make this presentation, you must have a fair volume of people, of constituents coming to you with these problems. Can you talk about the volume you have and the kinds of difficulties people have been facing?

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Mr. Maurice McMillan: At certain times, it kind of comes in floods. Any time there's a volatile price in

energy you'll get a number of calls—maybe five, 10—and if the retailers have hit the street there's usually somebody smart enough to go and call. So what I tell them to do is, I tell them to go down that street, tell them they can get out of that contract in 10 days if they want, and make sure they knock on every door they think a retailer went to. So that's what I do to help alleviate that situation.

It's terrible dealing with people who have no idea what they've just signed. All they know is, a couple of months down the road they maybe think something was wrong with the first bill. About three or four months in, they find out that that's the normal nature of the bill from there on in, and then they're hurt. Just like people are saying here, they're fighting energy bills for food, and there's no question; that's just straight up.

The Vice-Chair (Ms. Helena Jaczek): To the government side. Mr. Levac.

Mr. Dave Levac: Thank you for your presentation, Mr. McMillan and Don.

Two things come to my mind here. It sounds to me like, at the beginning and at the end, you do see that the efforts of Bill 235 are being made to deal directly with the consumer part of the part that you have had to deal with as an expert and having background in that, right? Both times, at the beginning and at the end, you recommend that you're here as a city councillor, and Orillia city council's position is that retailer licences must be removed.

Not to sound in conflict, but have you received this information as a city council resolution to say, "Go talk to them at Queen's Park," or are you here representing yourself with your background knowledge? I want to make sure that I'm clear on that.

Mr. Maurice McMillan: I'll make it really clear. I got notice four days ago that this hearing was taking place. I had no time to go to the municipality to get clearance from them, so I'm on my own. But we did go through council trying to get resolutions, which is in your package, to limit retailers. We tried to see if we could put a licence on top of the province's, and we found out, down through the chain of learning, that here's the place.

Mr. Dave Levac: Is it fair, then, to make a recommendation that before we close down the hearings and finish with the resolutions and the regulatory stream that the government is going to apply if this bill passes, you would bring it back to city council to provide them with an opportunity for resolution?

Mr. Maurice McMillan: I could.

Mr. Dave Levac: When one person speaks, it's great. When a whole town speaks—do you see where I'm headed? I'm not trying to be in conflict; I'm trying to be helpful here—

Mr. Maurice McMillan: No, no, fair enough.

Mr. Dave Levac: —if that's indeed what city council's intent is.

Mr. Maurice McMillan: At city council, we tried to deal with—since I got elected, I got elected on energy issues. City council, when I put it forth to them, we went

through the slow process of learning, of course. If we could, we'd get them off the street; there's no question about it.

Mr. Dave Levac: I appreciate that, and I would invite you to follow up a little bit more and maybe staff could help you, whatever the case may be, because it's really important. I can recognize that, as an individual with the background that you have, you definitely have a wealth of knowledge that should be shared with the rest of the council.

Mr. Maurice McMillan: If I have a minute or two, I'd like to point out here that energy companies always compete for the same consumer dollar. What is upsetting to me is, in the energy business, the gas companies always competed with the hydro companies for electric heat and electric hot water, so when you have a retailer coming around selling you both contracts, I think it's kind of a conflict of interest. The worst-case scenario is when we swing over so heavily to gas generation of electricity. Obviously we gave up energy competition in Ontario, because the gas company now is your hydro company. He sets the rate of competition, which is zero. No competition; total control. I find that unbelievable that all the free enterprise and all the competition that everybody talked about was thrown out the window the day the gas companies got the right to privately own gas-generating stations to produce power.

The Vice-Chair (Ms. Helena Jaczek): Thank you very much, Mr. McMillan. That concludes the 15 minutes. Thank you for coming down from Orillia.

Mr. Maurice McMillan: Okay. Thank you.

SUMMITT ENERGY

The Vice-Chair (Ms. Helena Jaczek): Next: we have Summitt Energy; Gaetana Girardi, director, compliance and regulatory affairs. Thank you for coming in. As you know, you have 10 minutes to make your presentation. I'll warn you at about the nine-minute mark so we have sufficient time for questions. Please proceed.

Ms. Gaetana Girardi: Great. Thank you for taking the time today to hear Summitt Energy's opinion and my colleagues', Just Energy, Direct Energy and Superior Energy Management.

Summitt Energy is an Ontario-based company. Our primary business is retailing energy contracts to residential and small commercial customers. We retail hot water tanks as well, and green energy products. Summitt Energy has been in business for approximately four years. As I stated, we're part of a retailer group that will be putting forth a submission today to the committee regarding Bill 235.

Summitt Energy supports the consumer protection initiatives of Bill 235. As stated by my colleagues, over the past 18 months the retailer group has been developing self-regulatory initiatives to ensure and to increase consumer protection. Some of the examples that have already been stated are: We've implemented a standardized sales training module which includes a test; we've

moved towards plain-language contracts; and we've developed an OEA information brochure which outlines the role of the retail marketer in Ontario and directs customers to the OEB if they have any concerns or require more information.

Summitt Energy has put forward suggestions to the bill which we feel will ensure consumer protection and enable retailers to continue operating in Ontario. We also feel that some of the existing sections in the bill will have a significant effect on the financial viability of retail companies and consumer choice.

Today I'd like to focus on three areas: cancellation rights, electricity product structure and third party verification.

As currently written, section 20 requires retailers to cancel a consumer's contract at any time and for any reason. Subsection 20(1) outlines that there will be a prescribed set of consumers and a prescribed set of cancellation fees. Summitt submits that this clause will lead to significant unintended consequences to its existing and future business for the following reasons: The main premise of our business is to ensure that we maintain the integrity of our firm supply contracts with our suppliers. It is through our firm supply contracts that we're able to provide the commodity to our end-use customers at the contracted price and for the term of the contract. The cancellation fee is a fair representation of the cost of maintaining the supply contracts. If inadequate cancellation fees are prescribed to retailers, retailers would be operating in an uncertain and unfeasible environment.

For example, in today's energy market, because of the decrease in energy cost, if all consumers called to cancel their contract without paying an exit fee or paying a prescribed exit fee, this would result in retailers not meeting their supply obligations and may result in the company becoming insolvent.

Summitt and the retailer group are proposing the following amendments to section 20: that section 20 either be removed or revised to clarify that the cancellation of a binding contract be subject to cancellation fees as prescribed by regulation; and that a new section be added that states that the new cancellation provision applies to contracts that have been entered into after the act and regulations come into force.

We've also put forward submissions, and I'd like to state them again, where we'd like to offer some consumer protection or enhancements around the cancellation. We'd like to recommend that the exit fees should be clearly disclosed to the consumers at the time of sale; that exit fees should be easily ascertainable by consumers; for residential consumers, the fee should be presented as a flat charge per year remaining on the contract; and that certain classes of consumers be exempt from having to pay cancellation fees. Such examples would be consumers who move out of the province, the elderly and for humanitarian reasons.

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In regard to product structuring, section 9 of the bill refers to retailers setting contract prices for electricity

products based on prescribed requirements and in a prescribed format. This suggests that there will be restrictions on the type of contracts that can be offered to retailers and how the price is presented.

Summitt's concerns with this section are twofold: Limiting the requirements for the design of the electricity product may not satisfy the market needs of consumers and may hinder product innovation in the market. For example, there are some consumers who may not always be able to shift their load to off-peak periods and for whom some form of a fixed-price contract or other product would best meet their needs.

In regard to the presentation of a retailer's contract price in the bill, Summitt submits that the retailer contract price be transparent to consumers so they can fully understand their commodity choices and commodity costs and address any questions regarding the retailer product directly to their retailer. If, for example, the provincial benefit is combined with the commodity cost, the consumer may be confused as to the cost of their commodity, which may lead to an increase in consumer inquiries.

Summitt proposes that section 9 be revised to encourage the development of a competitive market that provides a choice of innovative products to consumers that would help them manage their choices and their costs.

In the area of third party verification, this area, we submit, is one of the strongest areas which we feel will ensure consumer protection. We feel that the verification should be done as close as possible to the time of sale. Again, we feel that this will enhance consumer protection. We're basically saying that we shouldn't wait for the 10 days for the cooling-off period to lapse before doing the verification. It is based on the retailer's experience that completing the verification call at the time of the sale provides insight into consumers' understanding of the sales and enables the retailer to immediately address any sales agent issues. This, together with a prescribed set of questions, will enhance consumer protection.

If the verification call is done close to the time of sale, the customer service representative who's doing the sale can detect, say, any language barrier, comprehension barrier, any misinformation and close the deal at the time, not proceed with the call. We feel this is a very effective tool to ensuring that customers understand what they're entering into. The prescribed set of questions on the verification call can address the concerns that have been discussed today by the Low-Income Energy Network and the Orillia city councillor as well.

We're submitting that this will not affect the customer's cooling-off period. The customer will still have an opportunity to review the material that was left with them, to ask questions and exercise their cancellation rights, if they wish.

It would also appear that the act would not enable retailers to choose who conducts the verification call on their behalf. This would appear to prevent suppliers from

using their existing employees or vendors and may be required to use a vendor approved by the Ontario Energy Board. The unintended consequences of this approach would be a loss of jobs and of the retailer's ability to effectively manage their own business to ensure the quality of the call.

It's in the best interests of retailers to ensure that customers know the contract they're entering into. We want to keep these customers happy. We want to be able to renew them, so it's in our best interests that all these processes that we're doing to bind the contracts are done with full disclosure and consumer awareness.

The last point, coming into force: Summitt proposes that the act not come into force until all regulations have been completed and a time frame provided to retailers. Time is required for redesign, build, system testing and the training of employees.

The last point I wanted to talk about to add on to what my colleague Gord Potter was talking about this morning is the account holder. The act introduces a conflict, we believe, with the Ontario Family Law Act by allowing only the utility account holder to enter into or renew a contract. In addition, an agent of an account holder will not be able to enter into a contract. This means that a spouse of the account holder or an authorized party cannot enter into energy contracts on behalf of the household. Summitt submits that this places restrictions on energy contracts that go beyond those placed on other types of contractual arrangements in Ontario. For example, spouses are able to make decisions on behalf of the household in regard to cable, Internet and phone; why not energy contracts?

Secondly, it would also appear that a legally binding agent of an account holder would not be able to enter into a contract on their behalf. Many Ontarians have agency relationships with family members and other persons to manage their affairs. Summitt proposes that the act be amended to allow the account holder, the spouse of the account holder or any authorized agent to enter into energy contracts.

Thank you for your time today.

The Vice-Chair (Ms. Helena Jaczek): Thank you very much. We have about six minutes left for questions, and we're starting with the NDP. Mr. Tabuns.

Mr. Peter Tabuns: Thank you for coming down and making your presentation today. Can you tell us who supplies Summitt Energy with the electricity that they sell?

Ms. Gaetana Girardi: As stated by Gord, we use similar suppliers that he does, BP being an example.

Mr. Peter Tabuns: And BP, which facility?

Ms. Gaetana Girardi: I couldn't speak to that, sorry.

Mr. Peter Tabuns: And you use Bruce Energy as well?

Ms. Gaetana Girardi: I'm not sure. Sorry.

Mr. Peter Tabuns: Do you buy power from OPG itself?

Ms. Gaetana Girardi: No.

Mr. Peter Tabuns: So you use private generators outside of the OPG system?

Ms. Gaetana Girardi: Correct.

Mr. Peter Tabuns: And you have five-year contracts with these suppliers? You're constantly signing new contracts as you're bringing in people on new five-year terms?

Ms. Gaetana Girardi: Yes. What I can speak to is that we ensure that the supply we sell to our consumers is secured. So yes, we do sell five-year contracts, so all our contracts are hedged.

Mr. Peter Tabuns: Okay. And what are you currently charging per kilowatt hour?

Ms. Gaetana Girardi: We have several products out there. I believe one of the products is around 7.3 cents.

Mr. Peter Tabuns: Right. Any others?

Ms. Gaetana Girardi: No, that's the main product we have.

Mr. Peter Tabuns: How does that compare to what people would get, say, buying from Toronto Hydro here?

Ms. Gaetana Girardi: Well, the RPP rate is about 5.5 and 6.5, and then there are the time-of-use rates, which range from four cents to over nine cents.

Mr. Peter Tabuns: So how do people save money paying your higher rate per kilowatt hour?

Ms. Gaetana Girardi: It would depend on the household's needs and whether you're on time-of-use products or not. Our products don't guarantee savings. They're a peace-of-mind tool. They're a tool used to budget. Some people prefer that, depending on how big their home is, how they use energy and so forth.

Mr. Peter Tabuns: I'll just say that I followed a group of your salespeople through part of my riding a few weeks ago, asking people if they'd signed, and virtually every person I talked to was told that they would save money, that this was their big opportunity to cut their electricity costs.

Ms. Gaetana Girardi: That's not the case. I hear your concerns, Mr. Tabuns. Through the TPV call or through plain-language contracts, that would be something we would disclose up front. Our program does not guarantee savings.

Mr. Peter Tabuns: Well, that's not what they're hearing at the door.

Ms. Gaetana Girardi: Okay.

Mr. Peter Tabuns: For your information, that is not what customers are hearing when they hear that sales pitch.

Ms. Gaetana Girardi: Okay.

Mr. Peter Tabuns: Thank you.

The Vice-Chair (Ms. Helena Jaczek): Thank you. Mr. Levac.

Mr. Dave Levac: Ms. Girardi, just a couple of quick questions—you brought this one up, and I've heard it a couple of times: First, if I'm hearing you correctly, as I have heard other groups, you're kind of in favour of the direction that the government is taking with consumer protection?

Ms. Gaetana Girardi: Definitely.

Mr. Dave Levac: And from your perspective, with some changes and amendments, there could be a very happy—that everybody's walking away thinking that this is the best piece that we could write?

Ms. Gaetana Girardi: Yes. We could even make it more robust.

Mr. Dave Levac: Third party verifications: It has come up a few times now, and I want to get a real understanding of why you believe that the same moment the verification works—because, on a psychological side, I may have already spent my time convincing somebody to take the contract, and then to immediately get another phone call saying, "Is that the contract you want?" What I'm thinking is that somebody might already be in that euphoric moment when they've made the sell and then they're sitting back saying, "Oh, yeah, I understand what I just bought," but then maybe five days later they say, "Just a minute," or the spouse comes home and says, "What did you do?"

Interjections.

Mr. Dave Levac: I've been married 33 years. I'm telling you, I know what I've done.

I'm not trying to pick a fight on same-day verification; I'm just trying to understand. Your successes that you say you're meeting, in beginning to think a little bit about it—it could be very explainable why you're meeting with success, and that is, there could be this euphoric moment that people go through. In the selling and buying of something, they've convinced themselves that, "Okay, I'll take the plunge. I get it." Then somebody calls them in half an hour saying, "Did you buy this contract?" "Yeah, yeah, I understand what's going on." So help me understand that part.

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Then my last one: You indicated that if that does happen, you may have a problem with unemployment, because the verifiers that you use are part of your company. They weren't always verifying contracts because you weren't doing that all the time. So were they employees from some other department moved in to do this specialty job, or are they only doing verification?

Ms. Gaetana Girardi: If I understand your question, verification or reaffirmation is required in today's environment. It's required 10 days after the customer signs the contract. So we have to verify the contract right now.

Mr. Dave Levac: So your employees are doing that?

Ms. Gaetana Girardi: We have a combination of employees and contractors who do that. But, yes, it's done today.

Mr. Dave Levac: Do you understand my rethinking of why somebody might be happy that they've got a contract?

Ms. Gaetana Girardi: The cooling-off period would address that—

Mr. Dave Levac: So the understanding is that the verification contract makes sure that we don't have people who are totally confused and got duped at the door, and that the cooling-off period still exists and still provides them with an opportunity to exit.

Ms. Gaetana Girardi: That is correct. I would add that the verification call done at the time of the sale—it's happening with the person who's entering into the contract, which you may not get if you call 10 days later. So you're able to ascertain the comprehension level of the person at the time of the sale, and that's an important factor. At times, you can detect language comprehension; comprehension of product; age, if that's an issue. So you can ask these questions randomly, in different orders, so the salesperson doesn't become accustomed to what the questions are.

Mr. Dave Levac: And that's a script.

Ms. Gaetana Girardi: And that's the script. They can be as prescribed and detailed around any issues that you want to address.

Mr. Dave Levac: Okay. My brain was working, so—
Interjection.

Mr. Dave Levac: Leave it alone.

The Vice-Chair (Ms. Helena Jaczek): Mr. Yakabuski.

Mr. John Yakabuski: Actually, you answered part of the questions that I was contemplating.

My own thinking is that, while the issue is fresh in your mind, providing you have an approved script that is the same for everybody and that the legislation agrees with, you ask those questions—and those questions can identify whether something nefarious went on at the door, if that script is approved and consistent. I don't know what kind of questions are in it, but I would be interested in knowing if the salesman indicated that there would be a cost savings.

To Peter's question: If one of your agents, for example, clearly was identified as going around saying, "You're going to save money on your energy bills," is there a set disciplinary action that you would take under those circumstances?

I actually do think that the third party verification at the door—after 10 days, people sometimes are a little fuzzy about the details. "Did a guy ask you this? Did a guy ask you that?" I actually like the idea of verification on the spot: "Okay, was this asked? Was that asked? Were you told that this would happen?"—those kinds of questions. I kind of like that idea of verification at the door.

But I would like to know: If someone is identified as being rogue, what do you do?

Ms. Gaetana Girardi: We immediately address it with their manager, and we ask them to refrain from selling until the issue is investigated. We don't want that behaviour to continue. It's not in anybody's best interests. It just causes problems for the industry.

The Vice-Chair (Ms. Helena Jaczek): Thank you for your time.

ADVOCACY CENTRE
FOR TENANTS ONTARIO

The Vice-Chair (Ms. Helena Jaczek): Next we have the Advocacy Centre for Tenants Ontario: Kenn Hale,

director, advocacy and legal services; and Karen Andrews, staff lawyer. Please come forward and make yourselves comfortable.

As you know, you have 10 minutes for your presentation. I'll warn you at around the nine-minute mark so we have time for questions. Whenever you'd like to, begin.

Mr. Kenn Hale: Thank you, Madam Chairman. ACTO has been in discussions with the government about the protection of low-income consumers, particularly low-income tenants, and their energy bills for quite a long time, and we've always had a clear and simple message: Government must have policies that ensure that energy cost increases don't undermine the ability of low-income residents to afford adequate, suitable housing. We're here today to repeat that message and to ask that when the committee's looking at that bill, particularly those parts—and we're really here to talk about sub-metering and suite metering and what we call offloading of electricity onto tenants—we're asking you to measure this bill against that goal. If you do measure this bill against that goal, we believe that you'll agree that metering of individual rental apartments will hurt our efforts to meet the challenge of providing affordable housing to all Ontarians. Furthermore, this potential change to the vast majority of residential tenancy agreements is not necessary to achieve Ontario's energy conservation goals.

In our view, the new provisions that you're proposing for the Residential Tenancies Act in section 38 of the bill would not provide energy consumer protection in tenant households. It would leave those households vulnerable to increases in the total cost of their housing, and in many cases those would be increases that they could not afford.

The complexity of part II, and all the problems you've heard all day with the marketers and the retailers, demonstrates that purchasing utilities that are going to heat and light a home in Ontario is not longer a simple matter. There's a complicated web of parties and regulators, and this requires that the purchasers of utilities make the right choices and are able to forecast the effects of those choices. In our view, the way that our economy is set up, those are the kinds of decisions that are part of the job of being a landlord. For taking those kinds of risks, we reward investors with profits where they make successful choices. Access to knowledge about the market and commercial sophistication are the things that make landlords successful at these and increase the chances that they will be correct and that this would hopefully lead to profits and also to progress toward the government's policy goals, whatever those may be.

But residential tenants don't generally possess this particular kind of knowledge and sophistication. What they know about the energy market comes to them third- or fourth-hand, through the media, through people who come to the door trying to sell them things, through landlords and sub-metering companies telling them a story. The consequence to them of making the wrong choice is not just, "Our profits could go down this quarter," but it could be the loss of their home.

Putting the onus on tenants to monitor market forces and make predictions about where energy costs are going doesn't make economic sense. From our viewpoint, this push for individual metering of electricity is no more than an effort by some landlords to remove an unpredictable cost from their balance sheets in order to protect the profitability of their enterprise. It has nothing to do with protecting consumers, and furthermore, it has nothing to do with preserving the environment.

Tenants pay for rising electricity costs and benefit from any decline in electricity costs through the annual guideline rent increase that's based on changes to the consumer price index. Where there are extraordinary increases in utilities, landlords can apply to the Landlord and Tenant Board for additional rent increases above and beyond the CPI. What this does is smooth out the ups and downs in energy prices and protects tenants from that volatility. Tenants' wages and their pensions and social assistance benefits don't fluctuate according to where the energy market is going.

We understand the goal of our rent regulation policies to be keeping rents stable and predictable, but pushing energy costs onto tenants undermines this important objective. Even where tenants are able to reduce their use of electricity by changing the kind of light bulbs they use or using a power bar, the small savings they achieve are quickly eaten up by the administrative costs of running a sub-metering system and paying for a sub-meter.

It's claimed that this loss of stable rents and huge costs ongoing, both capital and administrative, of this individual metering is worth it, because we're going to reduce energy use, help Ontario cut its peak energy demand and meet our greenhouse gas reduction targets. We believe this is simply greenwashing. It's business seeking to put an environmentally friendly face on measures that do nothing other than enhance their profitability.

1720

ACTO and other tenant groups have been in the forefront of action to address energy conservation and climate change. We are one of the founders of LIEN, which you heard from earlier. We've helped them to provide community organizing and education to low-income consumers to meet the challenge of reducing energy use. We've advocated with the Ministry of Energy and Infrastructure and the Ontario Energy Board to meet those challenges while housing affordability is protected. We've fought back against the Ontario Energy Board, the Landlord and Tenant Board and the courts against efforts by landlords to evade the requirements that are there for them to meet energy conservation obligations while they're making money from sub-metering.

But the government has refused to acknowledge in our discussions that there is no objective, empirical evidence that forcing tenants to assume the cost of electricity will accomplish any significant reduction in energy use. It will make investors' returns on their investment more stable and predictable, it will make money for the building installation and managing companies that install smart meters, it will create low-wage clerical jobs in the

processing and collection of the bills, but it will not stop energy from flying out the poorly insulated doors and windows of our clients' homes. It will not stop tenants with drafty, poorly heated apartments from having to use their electric stoves and inefficient space heaters to keep themselves and their families from freezing on cold winter days. It will not encourage landlords to invest in the repairs and upgrades that will actually save electricity and reduce bills.

Studies by public agencies, as opposed to those conducted by those promoting sub-metering, do not show individual suite metering to have a significant impact on electricity use. In fact, an American study of over 600 public housing buildings shows no significant difference in electricity use between those buildings where electricity was included in the rent and where it was individually metered—and, unlike some studies referred to previously, this was about electricity use.

The only concession that the government has made to these realities is to give sitting tenants the chance to refuse to go along with the sub-metering scheme as long as they live in the same apartment. This is very similar to the vacancy decontrol form of rent control that's now perpetuated in the Residential Tenancies Act. New tenants have no choice but to accept what the landlord offers. Sitting tenants are pressured to go along with the sub-metering schemes, and they face extremely high barriers to enforcing the law against their landlords in this area. Any savings that tenants experience from reduced energy use are lost when the tenants move out of a unit. The landlord can put the unit back on the market for the same rent that was charged at the time that electricity was included. In a province where only a very few municipalities—those municipalities facing widespread economic difficulties—have a healthy vacancy rate, this is no protection for the energy consumer.

We ask the committee and the minister to ask themselves two questions in deciding if the sub-metering part of this bill is good policy: Who, between residential landlords and their tenants, is best able to manage the risk of a steep escalation in the price of electricity? I think it's obvious what the answer to that is. That's one of the reasons why utilities have traditionally been included in apartment rents. We believe this is also the reason why the Ministry of Municipal Affairs and Housing is proposing that all social housing units be exempted from individual suite metering.

The Vice-Chair (Ms. Helena Jaczek): You have one minute left.

Mr. Kenn Hale: Secondly, is it the landlords or the tenants who are able to make the significant changes in energy use that are necessary to create a meaningful reduction in peak energy demand and greenhouse gas emissions? Again, obviously, it's landlords. They provide the fridges, the stoves, the washers and the dryers that use most of the electricity. They provide and maintain the heating, ventilating and air conditioning systems that fight against the inadequate building envelope, and the rent regulation system provides incentives to them to

improve the energy efficiency. They can pass the cost of upgrades on to the tenants, and they can pocket the savings from the reduced energy bills.

Our recommendations are simple. Section 38 should be amended to say, "Part VIII of the Residential Tenancies Act is repealed," period, not replaced with a new scheme.

Secondly, to make sure that landlords don't continue to try to sneak these things in the back door, we would like you to add a section that says, "Nothing authorizes a landlord to discontinue a service or facility without the consent of the tenant."

Part II is addressing, with the energy retailers, existing government policy that has created all kinds of unforeseen problems of people preying on vulnerable homeowners. Let's learn from that experience and not create the conditions that put even more vulnerable residential tenants at risk.

Thank you very much.

The Vice-Chair (Ms. Helena Jaczek): Thank you. We're going to start with the government side. Mr. Levac.

Mr. Dave Levac: So, basically, if I'm hearing you correctly, you are in favour of the section of the bill that tries to protect the consumer at the door, and that—

Mr. Kenn Hale: Yes, but I would honestly say that's not really the experience of most residential tenants. I think the homeowners are the ones who suffer from the—

Mr. Dave Levac: So you're here to speak specifically on behalf of tenants.

Mr. Kenn Hale: Yes. That's our mandate.

Mr. Dave Levac: And having said that, then, basically, in a nutshell, you're suggesting that the landlords gain, the government gains, everybody gains except for the tenant.

Ms. Karen Andrews: Yes. The benefits of smart sub-metering in the tenant sector aren't what—it's not the way to go. It would be better to leave tenants alone.

Mr. Dave Levac: Okay. Thank you.

The Vice-Chair (Ms. Helena Jaczek): Mr. Yakabuski?

Mr. John Yakabuski: Thank you very much for joining us today, Kenn and Karen. You bring a different perspective than the federation of rental providers brought.

Mr. Kenn Hale: I hope so.

Laughter.

Mr. John Yakabuski: No, I'm not surprised—

Interjections.

Mr. John Yakabuski: —but they provided us with statistical evidence of what individual metering does to energy use. You've provided us with anecdotal evidence, but could you provide the committee with that empirical evidence and copies of those studies that show—and also, obviously, the authors of the studies—something that paints a different picture than what we've been given today? Because my natural instinct tells me that if I'm paying for something directly, I'm going to pay a lot more attention to its use.

Ms. Karen Andrews: Yes. Mr. Brescia, in his remarks, talked about groups bringing mythology, and I think he was talking about us. Fortunately, I have a degree in English literature as well as law, and I know what "mythology" means, and that's stories that speak to larger truths. So we're happy to engage.

This could devolve into a battle of experts. They have their statistics and we have ours. We have HUD in 2007 saying there was no meaningful change in behaviours. We have Toronto Hydro telling the Toronto Sun in January 2010 that smart sub-meters in houses, time of use, was not making any difference to behaviours.

We've got lots of reports, and we would be very happy to provide this committee with the alternative view. Reasonable people can disagree, and there are reports on both sides.

Mr. John Yakabuski: Now, they were more speaking about time-of-use meters.

Ms. Karen Andrews: Well, they were talking about a StatsCan study that was produced in—

Mr. John Yakabuski: The Toronto Hydro thing—

Ms. Karen Andrews: Toronto Hydro was time of use.

Mr. John Yakabuski: It was more about time-of-use.

Ms. Karen Andrews: Yes, absolutely. And I would ask everyone here to think about the blue box program. We've been blue-boxing for a long time, and I don't know anybody who doesn't do it and embrace it. The neighbour across the road who has too many loud parties and doesn't cut his grass: I notice that he is recycling. I notice that he is putting his paper in the right box. There is no financial incentive for us to do this, but we all do it because it's the right thing to do. We all do it.

I think that legislating smart sub-meters underestimates the goodwill of people. If you tell most people, "Turn off your lights," most people will turn off their lights. I think if you tell most people to try to run stuff that isn't essential after 10 o'clock at night, most people will do this. Voluntary compliance is very effective and is the cheapest way to go.

Mr. John Yakabuski: Thank you very much for your submission. I appreciate that, and your comments.

The Vice-Chair (Ms. Helena Jaczek): Mr. Tabuns? 1730

Mr. Peter Tabuns: Thank you both for coming down. Thank you for also suggesting others come down today. It's good to see a good, solid turnout of tenants.

Could you provide us with those studies? I know that it all does devolve into a battle of experts, but occasionally it's useful to have some experts on one side of an argument.

Mr. Kenn Hale: I think it's fair to say, and perhaps even the federation of rental providers would agree, that there has not been a good study in Ontario of electricity sub-metering in residential tenancy situations. The study they referred to was not about electricity to start with. But it would seem, if the government is proposing to change the basic, fundamental terms of contracts for hundreds of thousands of people and there have already been 150,000 people sub-metered, can't somebody do

some objective looking at those figures before we rush headlong into this, based on what we hope will happen and just happens to benefit one side of the agreement quite a bit more than the other?

So it's really a plea to the government members to ask your minister or the public service to do an actual study that we can all rely on, so we don't get into a battle of experts, which is often just going to be a battle of biased experts. We certainly will provide whatever information we have, but our experience has been that it's pretty thin on the ground that really provides you with any serious guidance. We would like to see that remedied.

The Vice-Chair (Ms. Helena Jaczek): Thank you very much for coming.

SUPERIOR ENERGY MANAGEMENT

The Vice-Chair (Ms. Helena Jaczek): We now have our final presenter of the afternoon, Superior Energy Management: Judy Wasney, director of operations, if you'd like to come forward and make yourself comfortable. As you know, you have 10 minutes. I'll warn you around the nine-minute mark, and that will leave us time for questions. So please begin.

Ms. Judy Wasney: I'm hoping I won't take that long. Thank you very much for giving me the opportunity to speak today.

I was actually very confident that the other marketers who are here today would reflect many of the opinions that I have, but I did want to come down and illustrate to the committee that as an industry, we are working very hard to resolve some of the issues that we've been facing.

Let me back up for just a moment. My name is Judy Wasney, and I represent Superior Energy Management. We market natural gas and electricity in Ontario, and natural gas in Quebec and BC as well. We have recently acquired a licence to market natural gas in New York City, or New York state, and are in the process of acquiring an electricity licence as well.

Superior Energy is a division of Superior Plus. We have a Canadian propane distribution company as well, Superior Propane, that you may be familiar with. We've recently acquired refined assets in the northeastern United States. Superior Plus also has two other divisions: one for specialty chemicals and another for construction products.

As I had just mentioned, Superior Energy definitely supports the ECPA. In fact, Superior, along with Just Energy, Direct Energy and Summitt Energy, have been working for the last 18 months. I've gotten to know them all very well. Trying to improve consumer protection for customers in the province, we have initiated a very extensive sales agent training document, along with testing that also requires regular updates, plain-language disclosure forms that are non-branded that we hand out at the door, and a variety of other initiatives as well.

We do feel, though, that there are some opportunities to increase that consumer protection based on some

amendments. There are a few that I was going to highlight today.

The first one that I wanted to mention is section 9, which prescribes potentially how we can define our products. I was a little unclear as to the intention of that particular clause, but in conversation with the ministry it appears that there may be a requirement in the future for retailers to provide time-of-use products. Superior Energy is certainly open to that. We think the smart meter implementation and the transition to time-of-use provides a significant opportunity for retailers, as well as others, to create new products, whether that be different buckets from what the OEB has in place or other technology that may be attracted to the province.

One of the issues with implementing time-of-use products, from a retailer perspective, is that there currently is no mechanism for us to get hourly data for the consumer. There has been a lot of work between the LDCs and ISO to create a system where that transfer will take place. Retailers have not been part of that implementation, and part of our concern is that if we get involved after that transition and implementation has taken place, there may be costs that could have been avoided.

Again, we're certainly open to offering time-of-use products, but I did want to say that if the intent is for retailers to provide only time-of-use products, that reduces customer choice. We feel there is going to continue to be a demand for fixed-price products. Not everybody has the opportunity or the situation where they can shift their electricity consumption and air conditioning. As Mr. Tabuns quite pointedly commented, it's not necessarily for comfort; sometimes it's for well-being. So we would certainly support an amendment to that section to require that time-of-use hourly data be provided in advance of any requirement for retailers to provide that type of product.

The second section I was going to talk about today is around cancellations. We've been operating in this province since 2002. We have many long-term contracts, some at really favourable rates, and we feel that the contract law that defines these contracts applies to us as well as to consumers. We feel that we shouldn't be able to back out of a contract if it suits us, and consumers should also not be able to back out of a valid contract without some kind of exit fee to help us mitigate our costs. As others said today, we procure 100% of the estimated consumption that our customers are consuming, and if we were to release a customer, then that would be our financial risk mechanism to offset that hedge.

Having said that, we feel there is an opportunity and do recommend that cancellation fees for agreements that are initiated after the ECPA comes into effect would be clearly defined for consumers at the door, would be easily determined by a consumer and, for residential consumers specifically, would be limited to a fixed amount for each year that is outstanding in the contract. That would allow us to mitigate our losses, and a consumer,

when evaluating the value of a contract, would have the information available to make that assessment up front.

The last item I was going to talk about today is around auto-renewals. I know that auto-renewals are very familiar to many consumers in the province for items such as insurance or cellphones, and natural gas, actually. We feel that the requirement that we meet currently to communicate renewals to consumers is very stringent. We feel that returning a customer to default supply because they haven't instructed us otherwise may not necessarily reflect their intentions. What we would recommend is that we be allowed to offer auto-renewals for a customer on a month-to-month basis, which would give them the flexibility to shop around, and to cap the rate we would renew the customer at to their existing contract.

1740

I did want to touch on one item with regard to third party verification. We've tested quality calls at the door here in Ontario. We do it in Quebec, actually, although it's not mandated, and it's a requirement in BC. One of the points I wanted to raise today is the fact that it's not an opportunity for us to further sell the contract. What we require of our sales agents is that they can't interrupt the conversation with the consumer.

The questions are actually very clear, very concise, and ask the customer pointed questions about the fact that they understand the sales agent does not represent a utility, but represent Superior Energy; that they're badged appropriately; that they understand that they may not experience savings, and what we're selling is price stability; and also that there are potential liquidated damages if they choose to cancel after—the cancellation fee. A couple of other questions we ask as well are around authorization, because that's obviously a very important question.

Again, I do appreciate the opportunity to speak today and certainly would be willing to answer any questions you may have.

The Vice-Chair (Ms. Helena Jaczek): Thank you very much. We'll start with Mr. Yakabuski.

Mr. John Yakabuski: Thank you very much for joining us today.

On the issue of cancellations, you people understand that the legislation is written—you have your advisers and legal people, and you understand that better than I do sometimes. I don't think that any reasonable person would expect that there would be an ability to cancel something without having a consequence; otherwise, people would be getting out of the contracts for their cars, and could just walk away from anything. They'd be doing that all the time, because there's no incentive to follow the rules. So you guys obviously have to follow through with your obligations. I'm getting a different sense that there must be, within this bill, some obligation on the part of the consumer to honour the contract.

Ms. Judy Wasney: Actually, the way we've read it, the worst-case scenario would be that there potentially isn't. There will be a prescribed group of people—we're

not quite sure who they are at this point—who would be able to get out of a contract without cause and would not have to pay any exit fees or would pay a prescribed exit fee, and we're unsure what that is.

Mr. John Yakabuski: So we don't even know what that's going to be?

Ms. Judy Wasney: No.

Mr. John Yakabuski: We don't now what the prescribed group of people is going to be. We presume it will be low-income earners or people who are challenged with their electricity bills, but there's nothing defined in the bill at this time.

Ms. Judy Wasney: No.

Mr. John Yakabuski: So we have to wait for regulations.

Ms. Judy Wasney: Not as we've interpreted it.

Mr. John Yakabuski: Okay. Thank you very much. I appreciate your input.

The Vice-Chair (Ms. Helena Jaczek): Mr. Tabuns.

Mr. Peter Tabuns: Judy, thanks for coming down today and making a presentation. Superior provides both electricity and natural gas?

Ms. Judy Wasney: Yes.

Mr. Peter Tabuns: Where do you get your electricity from?

Ms. Judy Wasney: Bruce Power.

Mr. Peter Tabuns: I imagine you have a variety of plans, and a year ago you may have signed for a different rate. Currently, what are you charging people per kilowatt hour?

Ms. Judy Wasney: We're not actually marketing to residential customers and haven't been for the last year. We're marketing to commercial customers. I could certainly give you an indication of what that is, but it tends to be for other customers' product.

Mr. Peter Tabuns: Why did you stop marketing electricity to residential customers?

Ms. Judy Wasney: From the standpoint of Superior Energy, we felt we needed to focus our operations, at least in the short term, on a more commercial focus.

Mr. Peter Tabuns: That's fine.

The Vice-Chair (Ms. Helena Jaczek): Mr. Levac.

Mr. Dave Levac: Thanks, Judy. I appreciate your dialogue and your conversation with us.

I indicated earlier that I was just having some thought—let me clarify, first of all, that it was not a government policy or any instruction that I was provided in terms of discussing third party verification, whether it's instantly or whether it's a 10-day cooling-off period. The 10-day period is within the scope of the legislation and the recommendation, and we are open to hearing the arguments for it.

I was just presenting a thought that maybe there's a reason why doing it right away is not such a great idea. Other people are saying that it is a great idea, because we've dropped our complaints etc. I'm open to hearing that. I just provided another reason or piece of rationale that might say that there might be a reason why people might not see that as effective for the consumer. That's

all. I don't mean it to enter into a very large discussion; I just put it out there.

The point that I do want to make—from you and from the others, along with my colleagues, all present—is that I've been impressed with the dialogue, the recommendations and the positioning that people have taken and explained in a way that is actually an open and honest debate. I felt good about today, hearing and understanding people's positions on a piece of legislation that I honestly believe will be supported, but that will be offered, I would respectfully suggest, probably some amendments or some questions about why certain things are in the bill and why certain things are not.

I've felt very engaged by the organizations and the individuals that have stepped forward, so I want to thank you for doing that. And I want to thank the pragmatic way in which our committee has approached this and set forth the concept of trying to get to the bottom of where we can make a nice piece of legislation. So I do thank you for your engagement, your words of understanding as to why the legislation is before us in the first place.

I'll leave it at that. Thank you.

Ms. Judy Wasney: I'd like to make one more point, actually, coming back to the at-the-door verification. I certainly found, in my experience, that door-to-door is actually the channel of choice for many marketers in Ontario, for a number of reasons. There are transactional reasons for that, as well. It's a difficult channel to monitor, so we found that doing that telephone call at the door, either while the sales agent is there or shortly after they have left, requires and improves the level of quality of the sale. It visibly alters their behaviour. So I feel it's a very positive recommendation for you to consider.

With regard to a consumer's second thoughts with regard to a contract, I think that there are a couple of ways that you can mitigate that. One, of course, is the cooling-off period, or communicating some kind of confirmation to the customer. Whatever those circumstances are, I think at least you're getting a hold of the person immediately and you're not getting a hold of, maybe, a spouse or somebody else in the household. It's certainly not up to 60 days after the sale, which I think is very difficult to verify.

The Vice-Chair (Ms. Helena Jaczek): Thank you very much. That concludes the 15 minutes.

That, in fact, concludes the public hearings. All those who wished to make oral presentations have done so, so just to remind the committee that the meeting originally scheduled for Wednesday, March 24, is not required. The committee will be meeting again to consider Bill 235 clause-by-clause on Monday, March 29 at 2 p.m. Again, I remind that all those proposed amendments should be filed with the clerk by noon on Friday, March 26. Thank you so much.

Mr. Dave Levac: Madam Chair, there were some requests by both the opposition and by our side—and we support the requests. Any other materials that any of the other deputants can get to us, can we make sure that everyone gets a copy of them?

The Vice-Chair (Ms. Helena Jaczek): The clerk has assured me that we will get copies to members as soon as they're received.

Mr. Dave Levac: Perfect. Thank you.

The Vice-Chair (Ms. Helena Jaczek): Thank you. This meeting stands adjourned.

The committee adjourned at 1746.



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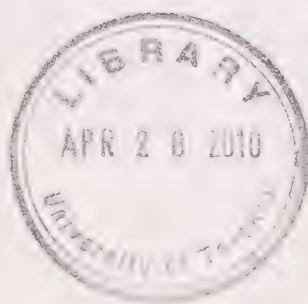
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Standing Committee on General Government

Energy Consumer
Protection Act, 2010

Comité permanent des affaires gouvernementales

Loi de 2010 sur la protection
des consommateurs d'énergie

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Monday 29 March 2010

Lundi 29 mars 2010

*The committee met at 1414 in room 228.*ENERGY CONSUMER
PROTECTION ACT, 2010LOI DE 2010 SUR LA PROTECTION
DES CONSOMMATEURS D'ÉNERGIE

Clause-by-clause consideration of Bill 235, An Act to enact the Energy Consumer Protection Act, 2010 and to amend other Acts / Projet de loi 235, Loi édictant la Loi de 2010 sur la protection des consommateurs d'énergie et modifiant d'autres lois.

The Chair (Mr. David Oraziotti): Good afternoon, everyone. Welcome to the Standing Committee on General Government. This afternoon, we're going to have consideration of clause-by-clause for Bill 235, An Act to enact the Energy Consumer Protection Act, 2010 and to amend other Acts.

I will start with section 1 and government motion number 1. If the member would like to read the amendment into the record. Mr. Levac.

Mr. Dave Levac: Before I do that, just to acknowledge publicly that I've spoken to the opposition and will designate for the sake of all of us the technical amendments that have been put forward. I'll acknowledge them as technical in nature so that we can move things forward with an understanding that questions could still arise. I've asked that legal be here in order to answer those questions, if they do come up.

I move that the definition of "person" in subsection 1(1) of the bill be struck out and the following substituted:

"'person', or any expression referring to a person, means an individual, sole proprietorship, partnership, including a limited partnership, trust or body corporate, or an individual in his or her capacity as a trustee, executor, administrator or other legal representative or such other class of persons as may be prescribed; ('personne')"

As an explanation, partnership and a limited partnership are mentioned but not other forms of partnerships such as limited liability partnerships. The proposed change would avoid any possible interpretation that a limited liability partnership was not contemplated. So it's to include.

The Chair (Mr. David Oraziotti): Any further comments on the first amendment? Seeing none, all those in favour? Opposed? The motion's carried.

The Chair (Mr. David Oraziotti): Government motion number 2: Mr. Levac.

Mr. Dave Levac: I move that clause 1(2)(a) of the bill be amended by striking out "consumers" and substituting "energy consumers".

The current wording of clauses 1(2)(a) and 1(2)(b) is not consistent, in that clause 1(2)(a) uses "consumers" whereas clause 1(2)(b) uses "energy consumers." This is a lack of consistency. We do not want to create confusion and, therefore, we're just changing those definitions.

The Chair (Mr. David Oraziotti): Any further comments?

All those in favour? Opposed? The motion's carried.

Government motion 3: Mr. Levac.

Mr. Dave Levac: I move that subsection 1(3) of the bill be amended by striking out "or duties".

This is again the same type of wording. It's incorrect to mention the duties in subsections 1(3) and 1(4). Accordingly, the word "duties" should be removed.

The Chair (Mr. David Oraziotti): Any further comment?

All those in favour? Opposed? The motion's carried.

Government motion 5: Mr. Levac.

Mr. Dave Levac: I move that subsection 1(4) of the bill be amended by striking out "or duties". Same rationale.

The Chair (Mr. David Oraziotti): Further comment?

All those in favour? Opposed? Carried.

Government motion 6.

Mr. Dave Levac: This is one of the spoken-of technical amendments.

I move that section 1 of the bill be amended by adding the following subsections:

"Powers and duties of board re energy consumers

"(5) Nothing in this act abrogates or derogates from the powers and duties of the Ontario Energy Board as they apply in respect of energy consumers as provided under the Ontario Energy Board Act, 1998."

Currently, under the ECPA there is no provision that informs the reader of the act that the ECPA is enforced by the Ontario Energy Board. This provision is intended to inform the reader that it is indeed so. That did get brought up during consultation.

The Chair (Mr. David Oraziotti): Thank you. Any further comment?

Seeing none, all those in favour? Opposed? The motion's carried.

Government motion 7.

Mr. Dave Levac: This is again technical in nature—
Interjection.

Mr. Dave Levac: Oh, I forgot to read the other section. I did see that. Thank you.

Sorry, opposition. I missed a section for the Hansard. Under the same heading of M6:

“Definition, energy consumer

“(6) For the purposes of subsections (2) and (5),

“‘energy consumer’ means a consumer as defined in section 2 and a consumer as defined in section 30.”

That’s as a result of an amendment we just passed.

The Chair (Mr. David Oraziotti): Now that it’s in the record, we’ll vote on it again. Any discussion?

All those in favour? Opposed? Carried. Thank you.

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Mr. Dave Levac: My mistake and apologies.

The Chair (Mr. David Oraziotti): Just one second, Mr. Levac. Shall section 1, as amended, carry? All those in favour? Opposed? Section 1 is carried.

Section 2: government motion number 7, Mr. Levac.

Mr. Dave Levac: This is a technical one, opposition.

I move that the definition of “consumer” in section 2 of the bill be struck out and the following substituted:

“‘consumer’ means,

“(a) in respect of the retailing of electricity, a person who uses, for the person’s own consumption, electricity that the person did not generate and who annually uses less than the prescribed amount of electricity, and

“(b) in respect of gas marketing, a person who annually uses less than the prescribed amount of gas; (‘consommateur’)”

The Chair (Mr. David Oraziotti): Any further comment?

All those in favour? Opposed? Motion 7 is carried.

Number 8: Mr. Levac.

Mr. Dave Levac: Again, it’s one of the technical ones.

I move that the definition of “gas marketer” and “gas marketing” in section 2 of the bill be struck out and the following substituted:

“‘gas marketer’ means a person who,

“(a) sells or offers to sell gas to a consumer,

“(b) acts as the agent or broker for a seller of gas to a consumer, or

“(c) acts or offers to act as the agent or broker of a consumer in the purchase of gas,

“and ‘gas marketing’ has a corresponding meaning;”—and in French.

The Chair (Mr. David Oraziotti): Any further comment?

Mr. John Yakabuski: I just want to hear him speak French.

Mr. Dave Levac: —“(‘agent de commercialisation de gaz’, ‘commercialisation de gaz’)”

Mr. John Yakabuski: Very good.

The Chair (Mr. David Oraziotti): All those in favour? Opposed? The motion is carried.

Government motion number 9: Mr. Levac.

Mr. Dave Levac: Number 9 is a technical one again.

I move that the definition of “retail” in section 2 of the bill be struck out and the following substituted:

“‘retail’, with respect to electricity, means,

“(a) to sell or offer to sell electricity to a consumer,

“(b) to act as agent or broker for a retailer with respect to the sale or offering for sale of electricity, or

“(c) to act or offer to act as an agent or broker for a consumer with respect to the sale or offering for sale of electricity,

“and ‘retailing’ has a corresponding meaning; (‘vendre au détail’)”

The Chair (Mr. David Oraziotti): Any further comments?

All those in favour? Opposed? The motion is carried.

Government motion number 10.

Mr. Dave Levac: It’s technical in nature.

I move that the definition of “salesperson” in section 2 of the bill be struck out and the following substituted:

“‘salesperson’ means,

“(a) in respect of gas marketing, a person, who for the purpose of effecting sales of gas or entering into agency agreements with consumers, conducts gas marketing on behalf of a gas marketer or makes one or more representations to one or more consumers on behalf of a gas marketer, whether as an employee of the gas marketer or not, and

“(b) in respect of the retailing of electricity, a person who, for the purpose of effecting sales of electricity or entering into agency agreements with consumers, conducts retailing of electricity on behalf of a retailer or makes one or more representations to one or more consumers on behalf of a retailer, whether as an employee of the retailer or not; (‘vendeur’)”

The Chair (Mr. David Oraziotti): Any further comments?

All those in favour? Opposed? The motion is carried.

Government motion number 11: Mr. Levac.

Mr. Dave Levac: I move that the definition of “text-based” in section 2 of the bill be struck out and the following substituted:

“‘text-based’ means text capable of being read by an individual and in such form, format or medium as may be prescribed, but does not include any form, format or medium that may be prescribed as excluded. (‘textuel’)”

The Chair (Mr. David Oraziotti): Any further comments?

All those in favour? Opposed? The motion is carried.

Shall section 2, as amended, carry? All those in favour? Opposed? It’s carried.

Government motion number 12, section 3: Mr. Levac.

Mr. Dave Levac: I move that subsection 3(3) of the bill be struck out and the following substituted:

“Limitation on effect of term requiring arbitration

“(3) Without limiting the generality of subsection (2), any term or acknowledgment in a contract, other agreement or waiver that requires or has the effect of requiring that disputes arising out of the contract, agreement or waiver be submitted to arbitration is invalid insofar as it prevents a consumer from exercising a right to com-

mence an action in the Superior Court of Justice given under this part or otherwise available in law.”

The amendment of this wording would ensure consistency in subsection 3(2), which states specifically that part II of the ECPA applies to any contract, other agreement or waiver. In order to avoid confusion when interpreting the act it is advisable that “waiver” also be inserted into section 3.

The Chair (Mr. David Orazietti): Any comments? All those in favour? Opposed? Carried.

Shall section 3, as amended, carry? Opposed? That’s carried.

Government motion number 13, section 4: Mr. Levac.

Mr. Dave Levac: I move that subsection 4(1) of the bill be struck out and the following substituted:

“Class proceedings

“4(1) A consumer may commence a proceeding on behalf of members of a class under the Class Proceedings Act, 1992 or may become a member of a class in such a proceeding in respect of a dispute arising out of a contract, other agreement or waiver despite any term or acknowledgment in the contract, agreement or waiver that purports to prevent or has the effect of preventing the consumer from commencing or becoming a member of a class proceeding.”

The amendment of this wording would ensure that there is consistency, again, in section 3, which states specifically under part II, “other agreement or waiver.” In order to avoid confusion when interpreting the act, it’s advisable that “waiver” be inserted in this. It’s the very same logic as the last one.

The Chair (Mr. David Orazietti): Further comment? All those in favour? Opposed? The motion is carried.

Shall section 4, as amended, carry? Opposed? The section is carried.

On sections 5 and 6 there are no amendments. Shall they carry? Opposed? Sections 5 and 6 are carried.

Section 7, Conservative motion number 14: Mr. Yakabuski.

Mr. John Yakabuski: I move that subsection 7(1) of the bill be amended by striking out clauses (b) and (c) and substituting the following:

“(b) text-based or in an audio file format; and

“(c) capable of being read or listened to by a person.”

This amendment would allow people to enter into a contract other than in person. It could be done over the phone; it could be done by text. We think this is something that the government may have overlooked in this legislation, but it is an option there for the consumer, it’s been proposed by people in the industry as well, and it in itself, if we’re following the amendments that are proposed throughout the bill, will not in any way, shape or form reduce the enhanced consumer protection that we’re all looking for in this bill.

The Chair (Mr. David Orazietti): Further comment? Mr. Levac.

Mr. Dave Levac: I thank the member for the logic and concede that at first blush it probably would not have an impact on the consumer, except it was the consumers

who complained to us that signing them up for five-year contracts based solely on phone conversations when the consumer had a poor command of the English language—and I know that there are other ways in which that can be verified, and that you could probably come back and say, “But it’s going to be documented,” and you could pull the text out and read it, but most consumers are likely not aware that the Electronic Commerce Act, 2000, can allow this practice to occur. So the interest of ensuring that the consumer is fully aware of the binding, legal nature of the contract of a supplier is to have the opportunity to show the contract to a spouse, to anyone else, that they heard that the rest of the conversation took place. From the deputations, we find it necessary to say no at this time.

The retailers’ request to change subsection 7(1), which requires that a document be capable of being read by the other person—they raised a concern that such a test would be hard for them to meet. Motion 15, if adopted, would remove the requirement of the person, and that’s where we are stumbling with this one, so we won’t be supporting the amendment.

The Chair (Mr. David Orazietti): Any further comment?

Mr. John Yakabuski: Well, as I said, there are provisions in the bill such as the third party verification and everything else; and we still do have the 10-day cooling off period, which is not in any way, shape or form going to be taken away by that. So we still have those protections. This is simply an amendment that would allow ease for business to operate and to conduct business in a more fluid way, thereby offering an option. There’s nothing binding; no one has to enter into a contract this way or any other way. It simply offers an option to the consumer and to the retailer as well.

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The Chair (Mr. David Orazietti): Any further comments?

Conservative motion 14, section 7: All those in favour? Opposed? The motion is lost.

Government motion 15: Mr. Levac.

Mr. Dave Levac: This is one of the technical ones. I move that subsection 7(1) of the bill be amended by adding “and” at the end of clause (a), by striking out “and” at the end of clause (b) and by striking out clause (c).

The Chair (Mr. David Orazietti): Any further comment? Seeing none, all those in favour? Opposed? The motion is carried.

Conservative motion 16: Mr. Yakabuski.

Mr. John Yakabuski: I move that subsection 7(2) of the bill be amended by striking out clauses (c) and (d) and substituting the following:

“(c) text-based or in an audio file format; and

“(d) capable of being read or listened to by the other person.”

The logic would follow the same as amendment 14. We probably have no need to have the discussion if the

words are going to be the same, but the logic is the same as motion 14.

The Chair (Mr. David Oraziotti): Further comment?

Mr. Dave Levac: Mr. Yakabuski is right: Because the audio portion of that is in here, we'll be saying no to the amendment.

The Chair (Mr. David Oraziotti): Seeing no further debate, all those in favour? Opposed? The motion is lost.

Government motion 17: Mr. Levac.

Mr. Dave Levac: This is identified as a technical amendment.

I move that subsection 7(2) of the bill be struck out and the following substituted:

"Same, provision of information or document in writing

"(2) Despite subsection 6(1) of the Electronic Commerce Act, 2000 but subject to subsection (7), in this part, a requirement that a person provide information or a document in writing to another person is satisfied by the provision of the information or document in an electronic form solely if it is,

"(a) accessible by the other person so as to be usable for subsequent reference;

"(b) capable of being retained by the other person; and

"(c) text-based."

The Chair (Mr. David Oraziotti): Any further comment? Those in favour? Opposed? The motion is carried.

Conservative motion 18: Mr. Yakabuski.

Mr. John Yakabuski: I move that subsection 7(3) of the bill be amended by striking out clauses (d) and (e) and substituting the following:

"(d) text-based or in an audio file format; and

"(e) capable of being read or listened to by the other person."

Again, the same logic as 14 and 16, and I expect the same answer from Mr. Levac.

The Chair (Mr. David Oraziotti): Mr. Levac?

Mr. Dave Levac: Mr. Yakabuski is correct.

Mr. John Yakabuski: Can you just repeat that over and over again? I just love the sound of it; that's all.

Mr. Dave Levac: Take that one and put it in your next flyer.

Mr. John Yakabuski: And you can do that in an audio or text file, as well.

Mr. Dave Levac: Mr. Yakabuski is correct: We will not be supporting the amendment. That's on record.

The Chair (Mr. David Oraziotti): All those in favour of Conservative motion 18? Opposed? The motion is lost.

Government motion 19: Mr. Levac.

Mr. Dave Levac: Of a technical nature, Mr. Chairman: I move that subsection 7(3) of the bill be struck out and the following substituted:

"Same, information or document in non-electronic form

"(3) Despite subsection 7(1) of the Electronic Commerce Act, 2000 but subject to subsection (7), in this part, a requirement that a person provide information or a document in writing in a specified non-electronic form to

another person is satisfied by the provision of the information or document in an electronic form solely if it is,

"(a) organized in the same or substantially the same way as the specified non-electronic form;

"(b) accessible by the other person so as to be usable for subsequent reference;

"(c) capable of being retained by the other person; and

"(d) text-based."

The Chair (Mr. David Oraziotti): Any further comments? Seeing none, all those in favour? Opposed? The motion is carried.

Conservative motion 20: Mr. Yakabuski.

Mr. John Yakabuski: I move that subsection 7(4) of the bill be struck out and the following substituted:

"Same, signing a document

"(4) Despite subsection 11(1) of the Electronic Commerce Act, 2000 but subject to subsection (7), in this part, a requirement that a document be signed is satisfied,

"(a) by an electronic signature if the electronic information that a person creates or adopts in order to sign the document is capable of being read by the person and is in such form as may be prescribed; or

"(b) by a voice signature that is,

"(i) made or verified in the prescribed manner,

"(ii) in an audio file format that can be listened to, and

"(iii) accessible so as to be usable for subsequent reference."

It is in a different section, subsection 7(4), but again, it is the same logic: means of digitally recorded electronic voice signature as provided under the Electronic Commerce Act—one where the government, again, will probably use the same logic, but I'd be interested in hearing Mr. Levac's objection. Again, it is just about offering opportunities, giving choice and making the system fluid.

The Chair (Mr. David Oraziotti): Mr. Levac.

Mr. Dave Levac: You'll be pleased to know that there's a little bit of a different logic on this one that I'm adopting: that we're drilling this down and getting closer. Some day, we may be able to move towards the direction that you're talking about, but until such time that the consumers believe that using the voice is that much safer than what it is presently, we're still not going to accept the rationale behind accepting the amendment. I will say that, given our province and the makeup of our province, the command of the English language is not consistent to the point where there's a satisfactory feeling that voice contracts are there yet. So we'll be saying no this time around.

The Chair (Mr. David Oraziotti): Mr. Yakabuski, would you care to respond?

Mr. John Yakabuski: I guess my question would be that we are moving into a much more technologically advanced—we're continuously using technology to enhance and make all facets of our life more convenient and easier. I'm just not sure that, with the expectations of immigration and everything else, the English-language barrier issue is one that's going to be better off being

addressed in the future. We do have protections further in this bill, further in this act, to ensure that the consumer is protected. This simply renders another choice as being something possible in order to complete a transaction. We'll still have more amendments—some of them, I think, that you're even proposing yourselves—to enhance consumer protection. This just gives an optional choice, and no one is bound, no one has to do it unwillingly. But not to have it there, even under your own admission that we're moving more and more in that direction as technology advances, I'm puzzled by that.

The Chair (Mr. David Oraziotti): Further comment?

Mr. Dave Levac: Well, no need to be puzzled, John. It's just that we're consistent with what we've been saying at this time. I'm personally observing that somewhere down the line, there might be a better comfort level for what we're talking about.

The Chair (Mr. David Oraziotti): Conservative motion—

Interjection.

The Chair (Mr. David Oraziotti): Mr. Yakabuski?

Mr. John Yakabuski: We're ready to vote.

The Chair (Mr. David Oraziotti): Okay. Motion number 20: All those in favour? Opposed? The motion is lost.

Government motion number 21: Mr. Levac.

Mr. Dave Levac: I move that subsection 7(5) of the bill be struck out and the following substituted:

"Signature, touching or clicking on an icon

"(5) Despite subsection (4), touching or clicking on an appropriate icon or other place on a computer screen is deemed to satisfy a requirement in this part that a document be signed, if the action is taken with the intent to sign the document and the action meets such requirements as may be prescribed."

My comment would be, "See, John? We're getting there." It's the idea of clicking on an "I agree" icon, and that it's acceptable.

The Chair (Mr. David Oraziotti): Further comment? All those in favour? Opposed? The motion is carried.

Government motion number 22: Mr. Levac.

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Mr. Dave Levac: This one is technical in nature, Mr. Chair.

I move that subsection 7(6) of the bill be struck out and the following substituted:

"Intent

"(6) Intent for the purpose of subsection (5) may be inferred from a person's conduct and the circumstances surrounding such conduct, including the information displayed on the computer screen and the person's conduct with respect to the information, if there are reasonable grounds to believe that the person intended to sign the document."

This was to bring clarity to the signature on a document.

The Chair (Mr. David Oraziotti): Any further comment? All those in favour? Opposed? The motion's carried.

Shall section 7, as amended, carry? Opposed? Section 7 is carried.

Government motion number 23: Mr. Levac.

Mr. Dave Levac: I will defer to Ms. Jaczek.

Ms. Helena Jaczek: This is another technical amendment.

I move that subsection 8(1) of the bill be amended by striking out "and shall comply" and substituting "and, in addition, shall comply".

The Chair (Mr. David Oraziotti): Comments? All those in favour? Opposed? The motion is carried.

Shall section 8, as amended, carry? Opposed? Carried.

Section 9, government motion number 24: Ms. Jaczek.

Ms. Helena Jaczek: I move that section 9 of the bill be amended by striking out "price of electricity" and substituting "price it charges for electricity".

The purpose of this amendment is to clarify that the power to prescribe requirements for retailer prices stated in contracts can include requirements relating to non-commodity charges such as the provincial benefit, also referred to as the global adjustment, that are included in the RPP prices paid by non-retail customers.

The Chair (Mr. David Oraziotti): All those in favour?

Mr. John Yakabuski: Let me just have a—which one are we at?

The Chair (Mr. David Oraziotti): Government motion 24, section 9.

Mr. John Yakabuski: Okay. She was using that in her explanation. I didn't see. I heard those words, "global adjustment," and they immediately got my interest. So this is another technical amendment? I was just getting some water there, so I wasn't paying attention.

Interjection.

Mr. John Yakabuski: Okay. I need to have a look at this, then.

Ms. Jaczek, what was your explanation again with regard to the—

Ms. Helena Jaczek: I'll defer to Mr. Levac.

Mr. Dave Levac: This amendment's to clarify that the power to prescribe requirements for the retail price stated in contracts can include requirements relating to non-commodity charges which take place, such as the provincial benefit—it's also referred to in some bills as the global adjustment—that are included in the RPP prices paid by non-retail customers. So it's basically bringing all the information in front of the consumer.

Mr. John Yakabuski: So the amount of the global adjustment would be a separate line item?

Mr. Dave Levac: That's my understanding—

Interjection.

Mr. Dave Levac: No? Yes, so that you can eventually show the all-in price, but it will be separate from the actual consumption. The consumer gets to see—

Mr. John Yakabuski: Maybe if I ask the question and frame it properly, the staff will be able to answer it better. Let's just say for the sake of argument that the contract price of power was seven cents a kilowatt hour, and in that particular month the global adjustment was

three cents a kilowatt hour. They would not simply be having a price of 10 cents per kilowatt hour, there would be seven and three showing on the bill? Is that it?

Interjection.

Mr. John Yakabuski: It's the opposite. Basically, what you're saying is that you're going to meld this—

The Chair (Mr. David Orazietti): Just excuse me for one second, Mr. Yakabuski. Mr. Levac, would it be worth having staff make comment here on this?

Mr. Dave Levac: It probably would be good just for a clarification of what you just told me.

The Chair (Mr. David Orazietti): Do you want to just state your name for the purposes of Hansard, and then you can respond?

Mr. Dan Shear: Dan Shear. The purpose of section 9 is to address how a retailer is required to calculate the price that it charges to a consumer. It doesn't relate to how the price is presented on a bill; that is actually addressed in a different section. Section 9 could theoretically allow the government to prescribe that a retailer must include in the price that it charges a consumer both the commodity charge for the electricity itself, for example, and also, in the case of electricity, the global adjustment.

Mr. John Yakabuski: Maybe I could just ask you a couple of questions for my own clarification. Legal people speak differently than I do.

We basically have that now in electricity contracts. They are affected by the global adjustment or the provincial benefit. The consumer pays the rate that they negotiate with the electricity retailer and they also pay the provincial benefit.

Mr. Dan Shear: Yes, that's correct.

Mr. John Yakabuski: So how is that different than what we do—what you're saying to me is that they will still have to continue to calculate that into their bill.

Mr. Dan Shear: Yes. The difference is—

Mr. John Yakabuski: Now, how we address it and how it shows on the bill is going to be dealt with in another section, correct?

Mr. Dan Shear: That part is correct, but to your first question, the difference is that today a retailer can enter into a contract with a consumer and quote a price as the contract price, and that price can include, if the retailer so chooses, only the commodity component. So the consumer, under the contract, would pay that commodity price but, in addition and separately and not under the contract with the retailer, would also pay the provincial benefit, and that could create confusion for a consumer.

Mr. John Yakabuski: Right. So now you're saying that they have to know that in addition to the commodity price, they will be charged whatever the rate, be it positive or negative, of the provincial benefit through that billing cycle as well.

Mr. Dan Shear: If the regulation so provides.

Mr. John Yakabuski: Thank you.

The Chair (Mr. David Orazietti): Anything further? All those in favour of government motion number 24? Opposed? The motion is carried.

Shall section 9, as amended, carry? Opposed? That section is carried.

There are no amendments to section 10—Mr. Tabuns, yours is coming up, 10.1. Shall section 10 carry? That's carried.

Mr. Tabuns: new section 10.1, NDP motion number 25. Go ahead.

Mr. Peter Tabuns: I move that the bill be amended by adding the following section:

"Unfair practice, door-to-door sales

"10.1(1) A supplier is deemed to be engaging in an unfair practice if a salesperson acting on behalf of the supplier goes personally to residential premises to speak or attempt to speak with a consumer for the purpose of marketing gas or retailing electricity to be provided by the supplier to the consumer.

"Exception

"(2) Subsection (1) does not apply if the salesperson visits residential premises pursuant to a previous request received from the consumer residing in the premises."

Chair, members of the government and opposition, I'm bringing this forward because of the experience I've now had with enough of these retailers, dealing both with my constituents and others I know in the province, who say to me that the door-to-door sales are quite powerful; that they result in confusion of the public; that they put particularly the elderly, those who are less literate and new Canadians at a tremendous disadvantage.

If in fact those individuals wanted to talk to a salesman and set an appointment and had him come, I don't have a problem with that. But I would say that what we see right now, with the sales force going through this province, often results in people paying far more for electricity or gas than they should, misunderstanding exactly what's going on.

Although I appreciate some of the efforts to toughen up the rules, in the end, I think this is a Wild West that needs to come to an end. I propose that telemarketing and Internet marketing would be allowed to continue. Frankly, if people were at a shopping mall and there was a booth there, they could go over and sign up if they so desired. But going door to door puts a lot of vulnerable people at risk and, thus, I'm moving that that no longer be a condoned or accepted practice.

The Chair (Mr. David Orazietti): Thank you, Mr. Tabuns. Mr. Levac, go ahead.

Mr. Dave Levac: You may be surprised, Mr. Tabuns, that we don't necessarily agree it should be banned altogether. With some comments we've heard over the last 18 months, we were informed and we subsequently looked into this. The industry itself was doing a review of its practices, finding best practices and improving the door-to-door opportunities. The legislation that is before us is designed to improve the disclosure and, as said by Mr. Yakabuski on a few occasions—and us—to make sure that consumer protection is the first wave that we're talking about. We believe as long as the consumer is fully informed regarding the product being sold, the industry itself is taking the steps to police itself, to improve itself

and has, indeed, made some of the recommendations that we are going to find in this legislation. We believe that with the consumer protection pieces that we put into this legislation, we can't accept the amendment.

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The Chair (Mr. David Oraziotti): Mr. Tabuns, go ahead.

Mr. Peter Tabuns: I just want to say that either your amendments, your bill, will be successful and the sale of these contracts will drop dramatically because most people who understand them won't sign them, or a way around will be found and we will be back here in a few years dealing with this problem again.

For those who consciously want to pay a higher price for renewable power, there's not a problem; they can go and do that. For those who understand markets and effectively hedging their energy costs, there's not a problem, and they can go out and find a company to do that. But for the vast majority of the public, for whom sorting out their retail energy bill is a small part of their lives and who can be hustled heavily at the door, I don't think there's adequate protection.

I understand what you're saying. You won't vote in favour of this amendment, but recognize the likely consequence of that.

The Chair (Mr. David Oraziotti): Mr. Yakabuski, go ahead.

Mr. John Yakabuski: Peter, I appreciate the process you go through to come up with this amendment. I guess my comment would be: If we're going to debate a bill that outlaws this type of business, I welcome the government to bring it on and we'll talk about it and we'll debate it. But your amendment would essentially have the same effect. It would ban them from continuing to conduct business in the only way that I would suggest would make the business viable.

We're not suggesting for a minute that there haven't been problems. The industry itself has clearly indicated that there have been problems. We're, in general, supportive of the initiative on the part of the government to bring in legislation that is going to be far stronger in protecting the consumer than we've ever been before when it comes to the issue of energy contracts, be they electricity or gas, but we're not at the point where we're prepared to throw the baby out with the bathwater and eliminate the industry entirely. There are an awful lot of jobs at stake, and there are people who, through their choice, want to have the certainty of knowing what the price is going to be from one month to the next or a five-year period, or whatever the time that the contract covers would be.

In the absence of wanting to eliminate that business entirely, I think that I would have to agree with Mr. Levac that we couldn't support that amendment because I think the effect of it would be just that.

The Chair (Mr. David Oraziotti): Mr. Tabuns, go ahead.

Mr. Peter Tabuns: I appreciate you taking the time to comment. I'll just say this: If, in the next year, when you go out and talk to your constituents, you ask those

who've signed up whether they signed up to give them a guaranteed price or because they thought they would be saving money, I think you will find that 90% or more of them thought that they were saving money and didn't understand that they were saving no money, but in fact signing on for a higher price than they would otherwise normally pay for the potential security that that price would not vary.

I think, John, that most of your constituents have a very different understanding of what they've signed up for, if indeed they've signed up for these contracts.

The Chair (Mr. David Oraziotti): Mr. Yakabuski.

Mr. John Yakabuski: Peter, I would not disagree that that certainly has been an issue. There is no question that that's part of what we're trying to address in this legislation. We have to ensure that when the regulations dealing with this piece of legislation are brought out, there are very serious consequences for misleading statements, should there be some. I believe that what we're talking about—and the proposals from the industry—is hard, set questions that would be asked in the verification of these contracts, such as: Did the agent purport to be representing a public utility? Did the agent guarantee savings? If the answer to any of those questions is in the affirmative, then that transaction should end immediately. That's our position, and I believe that that's probably very close to what the government's position on this would be. We're working co-operatively to try to make sure that consumer protection is paramount in this legislation, but your clause would render the whole purpose of the bill null and void. There'd be no reason to continue with the legislation because we'd render an industry out of business.

Mr. Peter Tabuns: I've made my arguments. I'd like a recorded vote.

Ayes

Tabuns.

Nays

Chiarelli, Clark, Jaczek, Kular, Levac, Mauro, Yakabuski.

The Chair (Mr. David Oraziotti): The motion is lost. We'll move to section 11, government amendment 26: Mr. Levac.

Mr. Dave Levac: I move that section 11 of the bill be struck out and the following substituted:

"Contracts, in accordance with s. 12

"11(1) No supplier shall enter into a contract with a consumer other than in accordance with section 12.

"Application

"(2) Subsection (1) applies to contracts entered into after subsection (1) comes into force.

"Classes or types of contracts

"(3) A regulation made in respect of contracts to which this part applies and any code issued by the board

or rule or order made by the board in respect of contracts to which this part applies may,

“(a) distinguish between classes and types of contracts and between consumers and classes of consumer; and

“(b) set out different requirements depending on the classes or types of contracts and the circumstances under which the contracts are made.

“Prohibition re entering, etc. certain contracts

“(4) No supplier shall enter into, renew or extend a contract with such persons or classes of persons acting on behalf of the account holder as may be prescribed.

“Contract not binding

“(5) A contract entered into by a supplier with a consumer that is not in accordance with subsection (4) is not binding on the consumer.

“Definition, account holder

“(6) For the purposes of subsection (4),

“‘account holder’ means the person in whose name an account has been established with a distributor for the provision of electricity or with a gas distributor for the provision of gas and,

“(a) in whose name invoices are issued by the distributor or gas distributor, whether on its own behalf, or on behalf of a supplier, in respect of the provision of the electricity or gas, or

“(b) in whose name invoices would be issued by the distributor or gas distributor in respect of the provision of electricity or gas, if the invoices were not issued by a supplier.”

By way of explanation on the first section, the amendment removes the redundant wording in the class/types of contracts. The explanation is that the amendment is proposed in order to improve the wording, since “classes” and “types” relates to both contracts and consumers.

Under the prohibition of entering, this replaces subsection 5. Rather than prescribing parties who can sign contracts, parties who cannot sign them on behalf of the account holder will be prescribed.

Under “contract not binding,” this subsection was simply renumbered to fit the bill.

The definition of “account holder” is admitted to reflect the change in the numbering of subsections, as we’ve done.

On the deleted sections, “consumer to be account holder” is replaced by the new subsection 4. Number 2, “same, agent of account holder”: To the extent that it is undesirable that any particular type of agent sign contracts on behalf of the account holder, that type of agent will be prescribed under section 4. The change will clarify that the intent is not to prohibit people with power of attorney or prohibit the signing of contracts on behalf of the account holder.

Ultimately, this section addresses some of the issues that were brought up by the industry regarding who can and who can’t.

The Chair (Mr. David Oraziotti): Any comments? Mr. Tabuns.

Mr. Peter Tabuns: Sorry. Would you explain that again?

Mr. Dave Levac: Which section?

Mr. Peter Tabuns: Six: the definition of “account holder.”

Mr. Dave Levac: Yes.

Mr. Peter Tabuns: Industry had difficulty with the original definition. What have you done with this definition?

Mr. Dave Levac: Under some circumstances, the power of attorney would not be of the account holder but would be acting on behalf of the account holder. Somebody who was close to dementia or the circumstances that were described under—there were some situations in the deputations. So we’ve tried to modify that enough so that there would be some flexibility built into that and it wouldn’t be defined solely to the account holder. I believe Mr. Yakabuski made reference to somebody going to Afghanistan and being the account holder. So we made some of those references.

1500

The Chair (Mr. David Oraziotti): Any further comments? Seeing none, all those in favour of government motion 26? Carried.

Shall section 11, as amended, carry? Opposed? That section’s carried.

Section 12, government motion 27: Mr. Mauro.

Mr. Bill Mauro: I move that subclause 12(1)(a)(i) of the bill be struck out and the following substituted:

“(i) contain such information as may be prescribed, presented in the prescribed form or manner, if any, and under the prescribed circumstances, if any, and”

The Chair (Mr. David Oraziotti): Any further comments? All those in favour? Opposed? The motion’s carried.

Number 28: Mr. Mauro.

Mr. Bill Mauro: I move that clause 12(1)(b) of the bill be struck out and the following substituted:

“(b) in the case of the retailing of electricity by a retailer and subject to such requirements as may be prescribed in accordance with clause (a),

“(i) contain such information as may be required by a code issued under section 70.1 of the Ontario Energy Board Act, 1998, provided in such languages as may be required by the code, and presented in the form or manner, if any, and under the circumstances, if any, required by the code, if a condition of a licence requires the retailer to comply with the code, and

“(ii) be accompanied by such information or documents as may be required by a code issued under section 70.1 of the Ontario Energy Board Act, 1998, provided in such languages as may be required by the code, and presented in the form or manner, if any, and under the circumstances, if any, required by the code, if a condition of a licence requires the retailer to comply with the code; and”

The Chair (Mr. David Oraziotti): Any further comment? Seeing none, all those in favour of motion 28? Opposed? The motion’s carried.

Number 29: Mr. Mauro?

Mr. Bill Mauro: I move that clause 12(1)(c) of the bill be struck out and the following substituted:

“(c) in the case of gas marketing and subject to such requirements as may be prescribed in accordance with clause (a),

“(i) contain such information as may be required by rules made by the board pursuant to clause 44(1)(c) of the Ontario Energy Board Act, 1998, provided in such languages as may be required by the rules, and presented in the form or manner, if any, and under the circumstances, if any, required by the rules, and

“(ii) be accompanied by such information or documents as may be required by rules made by the board pursuant to clause 44(1)(c) of the Ontario Energy Board Act, 1998, provided in such languages as may be required by the rules, and presented in the form or manner, if any, and under the circumstances, if any, required by the rules.”

The Chair (Mr. David Oraziotti): Further comment? Seeing none, all those in favour?

Mr. John Yakabuski: I’m just trying to see where the changes are. What’s the actual change, Bill, if you can tell me?

Mr. Bill Mauro: Okay. The explanation is: Section 12 provides that a contract may be accompanied by information or documents in such languages and form as may be prescribed. The amendments are required to clarify the regulation of the information in contracts and the form of that information. In particular, codes and rules are now made explicitly subject to whatever is prescribed in regulation under the ECPA. Furthermore—

Mr. John Yakabuski: I understand the explanation. I’m specifically looking at the clauses in the amendment and the clause in the current bill, and I’m struggling to find where the change is.

Mr. Bill Mauro: So I’ll finish the explanation: Furthermore, the flexibility to require retailers to provide the actual contracts to consumers in multiple languages was removed from the bill.

The Chair (Mr. David Oraziotti): Any further—you’re okay? All right.

Government motion 29: All those in favour? Opposed? Carried.

Shall section 12, as amended, carry? Opposed? That’s carried.

Section 13, government motion 30: Mr. Mauro.

Mr. Bill Mauro: I move that subsections 13(2) and (3) of the bill be struck out and the following substituted:

“Copy in prescribed form

“(2) Where a supplier enters into a contract with a consumer and the consumer is a member of a prescribed class of consumers, the supplier shall, within the prescribed time, provide the consumer with a copy of the contract in such form as may be prescribed, if the consumer requests it.

“Contract deemed void

“(3) A contract is deemed to be void in accordance with section 16, in any of the following circumstances:

“1. If no request is made under subsection (2) and the supplier fails to deliver a copy of the text-based contract in accordance with subsection (1).

“2. If a request is made under subsection (2) and the supplier fails to provide a copy of the contract in the prescribed form.

“3. If a request is made under subsection (2) and the supplier fails to provide a copy of the contract in the prescribed time.”

The Chair (Mr. David Oraziotti): Is there any comment?

Mr. John Yakabuski: I haven’t figured it out yet. What changes does this accomplish, Bill?

Mr. Bill Mauro: A technical amendment to subsection 13(2) is needed to clarify the circumstances under which subsection 13(2) applies. There is no substantive change to its application.

Mr. John Yakabuski: Okay.

The Chair (Mr. David Oraziotti): Those in favour? Opposed? Carried.

Shall section 13, as amended, carry? Carried.

Section 14, government motion 31: Mr. Levac.

Mr. Dave Levac: I move that section 14 of the bill be struck out and the following substituted:

“Requirement of acknowledgment of receipt

“14. For the purposes of this part, a requirement that a contract be delivered or provided to a consumer includes a requirement that the consumer acknowledges, in such form or manner as may be prescribed, that the consumer has received it and the consumer is deemed to have acknowledged receipt at the prescribed time.”

The requirement to deliver or provide a contract to a consumer also includes a requirement for the consumer to acknowledge it in the prescribed form or manner that he or she has received it. This amendment is proposed in order to remove the requirement that a consumer must acknowledge receipt of any other document or information from the retailer other than the contract itself: very specific to the contract.

The Chair (Mr. David Oraziotti): Any comments?

All those in favour? Opposed? That’s carried.

Shall section 14, as amended, carry? Opposed? That’s carried.

Section 15, Conservative motion 32: Mr. Yakabuski.

Mr. John Yakabuski: I move that subsection 15(3) of the bill be struck out and the following substituted:

“Timing of verification

“(3) Unless authorized by regulation, a third party may verify the contract under subsection (2) no later than the 60th day following the day on which the consumer entered into the contract.”

This is to deal with the position of the government that third party verification would have to take place—at least in the bill, it’s no earlier than the 10th day, and we did talk about that at committee. I firmly believe that the best time to verify what took place is as soon as possible after the actual happening. I think consumers would be most protected if as soon as that contract is entered into there is third party verification asking the questions that would

be prescribed in legislation, so that the person who enters into that contract is not waiting 10 days and then asking themselves, “Is that what was said?” or, “Well, I’m not sure. That was 10 days ago. That was a long time ago.” If that verification takes place as soon as possible, I’m convinced that the protection of the consumer will actually be enhanced, so that memories are not challenged, not by five days, not by 10 days; they’re challenged in a matter of minutes.

It could also be prescribed in regulation, because I know that one of the concerns that was raised about that was the fact that the agent is still in the vicinity. It could also be dealt with in regulation ensuring that the agent must leave the premises. Part of the conversation could be that the third party speaks to the consumer party in the contract and explains, “We will now be asking the agent to leave.” I know that this is practised in other jurisdictions where, when there is third party verification, the agent of the retailer at the scene must vacate, whether they go back to their vehicle or simply leave the premises. In the case of here in the wintertime, they might want to go back to their vehicle. In the summertime, they may be satisfied with simply taking a walk down the street or leaving the yard.

But I do believe that as soon as possible, when memories are fresh—and we recognize, as Peter has indicated, that we are talking about people who sometimes are not 30. They may be 65; they may be older. Depending on how that conversation 10 days later goes—I know that you could have a conversation with someone tomorrow about something that was said today, and if you use the right phrases, you can start to have them question their own memory as to the events of the day before. So I believe that third party verification as soon as possible would actually enhance consumer protection in this case.

The Chair (Mr. David Oraziotti): Mr. Levac, do you care to respond?

Mr. Dave Levac: I think it could be said that I have entered into this particular topic with a little bit of uncertainty about where the logic lands on both sides here to ensure that we’re getting the right consumer protection. I’m going to suggest to the member that there might be a different view of why that’s happening.

In a conversation we had, I was intrigued by the Texas example he shared with me, that those types of things were happening where the agent had to leave and verification was done. I would maybe offer him another rationale as to why. This might be perceived more as a company keeping track of its salespeople to ensure quality control than a contractual issue of whether the consumer is entering into the contract properly. Is it a performance appraisal to ensure that they are performing their tasks properly?

To me, there’s some fogginess between defining what that means, because one could be leaning more toward just making sure the salesmen are there and doing what they’re supposed to do and selling what they’re supposed to sell. Then, inside that is the consumer protection piece,

to ensure that the consumer is the one we’re writing this bill for and not worrying about whether this guy is performing properly or whether they’re performing properly with the consumer. I know that there is this weaving back and forth.

I want to ask him to give me a little bit of leeway and, with the committee’s indulgence, I’ll take a short recess to have a discussion with staff and see where this lands, if you’re amenable to that, Mr. Yakabuski and Mr. Tabuns.

Mr. John Yakabuski: Can I just make a short comment?

Mr. Dave Levac: Sure.

Mr. John Yakabuski: On your issue of keeping track of agents, I’m not suggesting that couldn’t very well be part of the logic. One of the challenges we’ve all heard about is the conduct of the agents themselves. If I was an employer and I had concerns or suspicions about one of my agents, the best way to nail that person and hold them accountable would be, as soon as possible after that contract was signed, while they’re off the premises but haven’t left town—until that third party verification call or whatever takes place, nothing is actually finalized—I would actually have the opportunity to say, “Do you know what? I’ve been wondering about that John fellow, and now I think I’ve got him.”

As an employer, you can’t holus-bolus fire an employee just because you think they may be doing wrong; they’ve got protection too. But if you have that third party verification on the spot and you’re asking those prescribed questions, as I’m talking about in regulation, there is no fudging. There is no leeway on the part of the company or the agent about what questions that consumer must answer on the spot, such as, “Did this agent say he was with Hydro One?” or whatever, and “Did this agent guarantee savings to you through the course of this contract?”

If we were able to do that quickly, yes, that would help the retailers, but it would also help them be more in the spirit of what we’re trying to accomplish in this bill, and that is to eliminate the rogue agent, which is part of the reason we’re here in the first place.

Mr. Dave Levac: With that, permission to recess for a few minutes? Is five minutes okay?

The Chair (Mr. David Oraziotti): A five-minute recess has been agreed to.

The committee recessed from 1514 to 1527.

The Vice-Chair (Ms. Helena Jaczek): Okay, we’re resuming discussion on PC motion 32. Further comment? Mr. Levac.

Mr. Dave Levac: As committed to my friend—and my rationale for having a recess—I wanted to discuss how this could be accomplished with some staff and legal minds.

There’s going to be some confusion and conflict with some of the amendments that we’re contemplating in front of this. There will be a difficulty in having this happen, not for the rationale presided over when we talked about confusing consumers, or the business

practices of the salespeople, but rather, as the ministry and the minister spoke to me before, about the cooling-off period—between 10 and 60 days as written—is the rationale behind the call to allow for the cooling-off period to take place independent of verification. Between those two, introducing this would be in conflict with the amendments proposed in the legislation; meaning, we're going from not doing the verification at the door to doing the verification at the door. The rationale of what we just presented in the motion we accepted was not to do it at the door.

While I appreciated deeply the logic that was presented in our discussions, heard from the industry and from you, citing the Texas example, as well, there are other circumstances mentioned from other sources that indicated that unfortunately, extremely unfortunately, beyond just simply being an employee of the company, by extension—other examples were cited in the extreme, where people were using that as a front to case the place to perform illegal acts afterwards and sharing that information with others.

That said, the government has indicated that by accepting this amendment, it would not be able to pass regulations that could actually counter itself. So they could put regulations in to discuss whether or not the person was allowed to be on the premises or not, they could put regulations in to kind of shore that up and make sure there's meat behind that, but then there couldn't be any other regulation that could remove that in the event that this does not turn out to be the consumer protection that was committed to on the idea of it happening.

With that, unfortunately, I would say to you that we were not able to come up with something that would be acceptable, I would imagine, to yourself or inside of the government. We can't accept the amendment that is proposed.

Mr. John Yakabuski: I do regret that because I absolutely, totally believe that that immediate verification would be a positive thing.

If my kids want something, the best way for them to be likely to get it from me is to say, "You know, dad, you've been busy and you've been away, but three weeks ago, you actually told us that you would do this." And I would probably say something like, "Are you sure?" And then Emily would look at Lucas and Lucas would say, "That's right," and I'd be had because I couldn't even rely on my own memory for an extended period of time over 10 days to be sure that my kids weren't snowing me. But I'll tell you, if I made a commitment to Emily and I had to verify that immediately, I'm pretty sure I'd know whether I said I would do something or I didn't say I would do something.

Using that logic, I firmly believe—because Dave, you know we still have, as far as this legislation is concerned—and all of those legal people can tell me otherwise if they'd like to—10 days to say no. Even after that third party verification, the consumer still has 10 days to look at that contract, to give that contract to a son or a daughter or a brother or a sister or a friend or a neigh-

bour, or someone who is experienced in dealing with these kinds of transactions, and say, "What do you think about it? Do you think I did good here or do you think I made a mistake?" Wherever that conversation goes is irrelevant, but the consumer then still has the right, under this legislation and under general contract law, I believe, to say, "No. Yes, I verified it"—and we have the tapes of that verification or whatever—"but I'm exercising my right to say no because I got a fourth party opinion after I signed that contract, after the third party verification. I went to talk to somebody who is not selling me anything, who is not profiting in any way from whatever my decision might be. They're just somebody who I absolutely trust is going to be working in my best interests, and they're telling me I made a bad deal. I'm saying no." Or they might tell them, "Do you know what, Mom? I think you're okay with it," the point being that we still have the right as a consumer to say no within the period prescribed by law.

The Chair (Mr. David Orazietti): Any further comment? Seeing none, all those in favour of Conservative motion number 32? Opposed? The motion is lost.

Government motion number 33: Mr. Levac.

Mr. Dave Levac: I move that section 15 of the bill be struck out and the following substituted:

"Need for verification of contract

"15(1) If a text-based copy of the contract has been delivered to a consumer in accordance with subsection 13(1) or a copy of the contract has been provided in accordance with subsection 13(2), the contract is deemed to be void unless it is verified by a person who meets such conditions and qualifications as may be prescribed.

"Persons not permitted to verify contract

"(2) Despite subsection (1), a contract shall not be verified by persons or classes of persons as may be prescribed.

"Verification in accordance with regulations

"(3) A person may verify a contract only in accordance with the regulations.

"Timing of verification

"(4) Unless otherwise prescribed, a person may verify the contract under subsection (2) no earlier than the 10th day and no later than the 60th day following the day on which a copy of the contract is delivered or provided to the consumer in accordance with section 13.

"Consumer notice that contract not verified

"(5) The consumer may, in accordance with the regulations, give notice to not have the contract verified, at any time before the verification of the contract under this section.

"Application of subsections (1) to (5)

"(6) Subsections (1), (2), (3), (4) and (5) apply with respect to contracts entered into on or after the day on which this section comes into force."

By way of explanation, Mr. Chairman, on the first section 15, the amendment is required in order to reflect the proposed rewording of section 14, which clarifies the timing of the consumer's acknowledgement of receipt. It

then becomes redundant to mention acknowledgement of receipt in this section. This amendment is technical but required due to the interconnection of many sections, which was why I didn't classify it as a technical amendment, because of the other sections. All of the section 15 changes are included in the same motion. If the amendments to the subsection are carried, we don't need to worry about the rest.

The Chair (Mr. David Oraziotti): Thank you, Mr. Levac. Any further comments?

Seeing none, all those in favour? Opposed? The motion is carried.

Shall section 15, as amended, carry? Opposed? That's carried.

Section 16: We have a replacement motion, 34R.

Mr. John Yakabuski: I don't have a copy of that motion. Oh, apparently I do. You slipped it in when I wasn't looking.

The Chair (Mr. David Oraziotti): Mr. Levac, I understand that there's some wording on the motion at the end that needs to be struck out and—34R.

Mr. Dave Levac: Yes, Mr. Chairman.

The Chair (Mr. David Oraziotti): Do you want to clarify the change?

Mr. Dave Levac: Yes. I still have to read it as a motion?

The Chair (Mr. David Oraziotti): Yes.

Mr. Dave Levac: I move that section 16 of the bill be struck out and the following substituted:

"Contract deemed void

"16(1) A contract is deemed to be void if,

"(a) at the time the consumer enters into the contract the consumer does not provide the acknowledgments and signatures required under subsection 12(2);

"(b) a text-based copy of the contract is not delivered to the consumer in accordance with subsection 13(1);

"(c) a text-based copy of the contract is delivered to the consumer in accordance with subsection 13(1) and,

"(i) the contract is not verified in accordance with section 15, or

"(ii) the consumer gives notice in accordance with subsection 15(5) to not have the contract verified;

"(d) a copy of the contract is not provided to the consumer in the prescribed form in accordance with subsection 13(2), if requested by the consumer;

"(e) a copy of the contract is provided to the consumer in the prescribed form in accordance with subsection 13(2), if requested by the consumer and,

"(i) the contract is not verified in accordance with section 15, or

"(ii) the consumer gives notice in accordance with subsection 15(5) to not have the contract verified; or

"(f) the prescribed circumstances apply.

"No cause of action

"(2) No cause of action against the consumer arises as a result of a contract being deemed to be void under subsection (1) or as a result of the operation of subsection (4).

"Refund within prescribed time

"(3) Within a prescribed number of days after a contract is deemed to be void under this section, the supplier shall refund to the consumer the money paid by the consumer under the contract.

"Consequences of contract being deemed to be void

"(4) If a contract is deemed to be void under this section, the consumer shall not be liable for any obligations under the contract or a related agreement, including obligations purporting to be incurred as cancellation charges, administration charges or any other charges or penalties."

"Amended by striking out 'Subsections 15(1) to (5)' in the portion before paragraph 1 and substituting 'Subsections 15(1) to (4)'."

These are technical to clarify and achieve consistency with the ECPA provisions.

The Chair (Mr. David Oraziotti): Any further comment?

Interjection.

The Chair (Mr. David Oraziotti): Mr. Levac, with respect to the section at the end, it was read into the record, but I assume that that's the portion that's coming out?

Mr. Dave Levac: Correct.

The Chair (Mr. David Oraziotti): Do you want to just clarify for committee the sentence or the language that is being removed in 34R?

1540

Mr. Dave Levac: Thank you, Mr. Chairman. As a result of "R," the wording "amended by striking out 'subsections 15(1) to (5)' in the portion before paragraph 1 and substituting 'subsections 15(1) to (4)'" will not be read into the record.

The Chair (Mr. David Oraziotti): Thank you. Any further comments? All those in favour? Opposed? The motion is carried.

Shall section 16, as amended, carry? Opposed? That's carried.

Sections 17, 18 and 19 have no amendments. Shall they carry as presented?

Mr. Dave Levac: I have a technical amendment in 18 of the bill.

The Chair (Mr. David Oraziotti): Sorry. Section 17: no amendments. Shall section 17 carry? Carried.

Section 18, government motion 35: Mr. Levac.

Mr. Dave Levac: It's technical in nature, Mr. Chairman.

I move that section 18 of the bill be struck out and the following substituted:

"Renewals, extensions and amendments of contracts

"18(1) A contract with a consumer may be renewed or extended or amended only in accordance with the regulations.

"Application of subsection (1)

"(2) Subsection (1) applies to,

"(a) the renewal or extension of any contract that would, if not renewed or extended, expire after subsection (1) comes into force; and

“(b) the amendment of any contract that would have effect after subsection (1) comes into force,

“whether the contract was made before or after subsection (1) comes into force.”

The Chair (Mr. David Orazietti): Any further comments? Seeing none, all those in favour? Opposed? Carried.

Shall section 18, as amended, carry? Carried.

Section 19: government motion 36.

Mr. Dave Levac: I move that section 19 of the bill be struck out and the following be substituted:

“Cancellation of contracts

“Cancellation, cooling-off period

“19(1) A consumer may, without any reason, cancel a contract at any time from the date of entering into the contract until 10 days after,

“(a) a text-based copy of the contract, or a copy of the contract in the form required under subsection 13(2) if applicable, is delivered to the consumer; and

“(b) the consumer acknowledges its receipt in accordance with section 14.

“Same, contract does not meet requirements

“(2) A consumer may cancel a contract at any time after the date of entering into the contract if the requirements referred to in subsection 12(1) are not met.

“Same, unfair practices

“(3) A consumer may cancel a contract at any time after the date of entering into the contract if the supplier engages in an unfair practice.

“Same, other prescribed circumstances

“(4) A consumer may cancel a contract under such other circumstances as may be prescribed.

“Same, without cause

“(5) In addition to any other rights under this part, a consumer may cancel a contract at any time and without cause, but the consumer must give the prescribed period of notice of cancellation.”

Therefore, Mr. Chairman, the provisions of the bill dealing with the right to cancellation, consumer liabilities on cancellation and the right to return of payments have been significantly revised to make them easier to follow.

The revised section 19 sets out in one section all of the circumstances where a consumer may cancel a contract. Cancellation circumstances include the following: cancellation within the 10-day cooling-off period; the contract does not meet prescribed requirements as to form and content set out in section 12; the supplier engages in an unfair practice; prescribed circumstances; and without cause, provided the consumer gives the notice of cancellation within a prescribed period.

The Chair (Mr. David Orazietti): Any further comments? Seeing none—Mr. Yakabuski?

Mr. John Yakabuski: Dave, you’ve seen our amendment. While it’s not in the same section, does it have any effect that would—

Mr. Dave Levac: Yes. We’re close.

Mr. John Yakabuski: We’ve always been. It just doesn’t appear that way sometimes.

Okay. Well, we’ll be proceeding with amendment 37 anyhow. Perhaps you can—

Mr. Dave Levac: We’ll comment on it.

Mr. John Yakabuski: Yes.

The Chair (Mr. David Orazietti): Any further comment? Seeing none, all those in favour? Opposed? Carried.

Shall section 19, as amended, carry? Carried.

Section 20, Conservative amendment 37: Mr. Yakabuski.

Mr. John Yakabuski: I move that section 20 of the bill be struck out and the following substituted:

“Cancellation

“20. In addition to any other rights under this part, a consumer may cancel a contract to which this part applies at any time and without cause, but the consumer must,

“(a) give the prescribed notice of cancellation; and

“(b) pay a fee in the prescribed amount or calculated in the prescribed manner.

“Limit on fees charged

“(2) A consumer who cancels a contract is not liable for any fees in addition to the fees required under clause (1)(b).”

What we’re trying to ensure here is that we don’t get into a situation where someone can enter into a contract and then exit a contract with no obligations whatsoever. I don’t think that’s what we’re trying to accomplish here.

As I say, and as I’ve said repeatedly from the outset, consumer protection is paramount and has to be the paramount motivation of this bill. But I don’t think that we should be getting into a situation where people can enter into a contract knowing or believing, “There are no obligations on my part. I can get out without cause. All I have to do is let them know that I’m cancelling it.” I think that reverberates through our entire personal responsibility that society expects us to adhere to. In fact, I heard the Premier the other day saying, “You’ve got to keep your word.” You’ve got to keep your word.

I don’t think that this committee and this bill should be entering into a realm where we’re absolving consumers of their responsibilities. Let me make it perfectly clear: We are not talking about bringing in or doing things that allow unscrupulous operators to hose consumers; not at all. But at the same time, a consumer has to have the responsibility to ensure that they’re holding up their end of the bargain.

Back in 2002, the previous government had brought the marketplace in on electricity, and then the summer of 2002 was one that was helter-skelter and very tough on electricity consumers because of the significant increases in electricity prices. The Premier of the day, Ernie Eves, decided in November that they would close that market and bring back a regulated price for consumers. But a consequence of that was that they had to compensate all of the retailers that had entered into contracts with consumers.

When someone enters into a contract with a consumer, they’ve also entered into a contract with a supplier. They don’t produce the product. They’re brokers; they buy the

product and they market it to the consumer. Just as surely as they have a contractual obligation, if the consumer is allowed, without any penalties or obligations, to remove themselves from that contract, then I suspect that the government—in my opinion, I’m saying that this could prevent some long and onerous litigation in the future. If an energy retailer is penalized or can verify a loss as a result of having to be contractually obligated to whom-ever they bought the energy from, while the person, the customer, that they’ve sold it to is not contractually obligated to hold up their end of the bargain, then we’re going to have a total imbalance. I would suspect that somebody’s going to be challenging the validity of legislation that puts them into that position.

Again, let’s be clear: We’re doing what we can to protect consumers. That’s why you need to have all those issues taken care of in the front end as well, so that everyone understands clearly what they’re entering into.

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If you don’t know, don’t do it; if you’re unsure, don’t do it. Don’t get into a contract—this applies to anybody. Don’t enter into a contract unless you’re confident that the contract that you’re signing is one that you understand explicitly and you’re comfortable with its terms.

Where else is this going to apply? If you’re going to use this principle, there are a whole lot more things than just energy contracts in which the government may have to involve itself with respect to settling contractual disputes between suppliers and consumers.

I think that this amendment, while not lessening in any way, shape or form the protection on consumers, clarifies that a contract is still a contract, and that you have an obligation to fulfill your obligation in the contract, regardless of which party you are.

Mr. Bob Chiarelli: I just have a question. What do you think a reasonable fee would be for cancellation?

Mr. John Yakabuski: That’s not for me to decide. That’s something to be done in regulation. I don’t see any fees in any of this legislation, Bob. I don’t see anybody coming up with any numbers in this legislation. That’s why we pay all these people who are sitting over there: to come up with—

Mr. Bob Chiarelli: Notwithstanding that, I would still like to know what your sense of a reasonable amount would be.

Mr. John Yakabuski: I would not venture to go there, because I don’t have the expertise. I don’t have any experience in these contracts. I’m not party to one, so I don’t know what the value of one of these contracts, over a period, would be. I think it would be a stretch for me. There are people who do a lot more work in this field than I do. It would be a stretch for me to try to suggest what a fee or a remedy may be.

Mr. Bob Chiarelli: Would the prescribed fee, the cancellation fee, be prescribed in the contract?

Mr. John Yakabuski: No, I think that’s what you do in regulation.

Mr. Bob Chiarelli: But if you’re on the doorstep, talking—

Mr. John Yakabuski: Bob, I’m giving you the amendment. I’m going to end that discussion right here. I’m not the government; I’m not answering those questions. You’ll have to talk to the PA. Maybe he’s got an idea.

Mr. Bob Chiarelli: Okay, but it’s your principle, your concept. You must have some sense of it.

Mr. John Yakabuski: Well, listen, there are all kinds of principles and concepts that have been prescribed in many amendments that have been proposed or talked about. In any amendments proposed, Bob, I haven’t seen any dollar figures yet.

Mr. Bob Chiarelli: So you trust the government to come up with the right number.

Mr. John Yakabuski: It’s not a question of trust; it’s their job.

The Chair (Mr. David Oraziotti): Mr. Levac, do you want to add to this discussion?

Mr. Dave Levac: Yes, I do. Bob, are you finished? Okay. John, you had me at “hello.” If you’ll notice—

Mr. John Yakabuski: You could’ve stopped me.

Mr. Dave Levac: Well, no, you liked it. I don’t think I would want to try to stop you, John.

If you take a look at section 40, we are proposing, in motion 40, to do virtually what you’re attempting to do. Although I’m not going to remove any of your comments from Hansard in terms of disputing them, that is the intent of motion 40, and that we do—

Mr. John Yakabuski: We only get these things when we walk in here, so I haven’t had a chance to look at it.

Mr. Dave Levac: We do recognize the content of your discussion and the content of your motion, except to say that—

Mr. John Yakabuski: Maybe you can answer Bob’s question, then.

Mr. Dave Levac: That will come. The motion is similar but we’re not able to accept it because the provisions related to cancellation and penalties are to be extensively amended, and the motion doesn’t fit in that framework that we’re going to create. But the intent is accepted.

I was suggesting to you earlier that when I’m in the House and when I’m talking here, I try to find those opportunities to pull these things together. This is one of them. We’re going to ask you to be patient with motion 40. You’ll see that the same amount of thought was put into how we are trying to obtain both the balance between protecting the consumer and not having the agencies bury the fees in their margins. You’ll see that that—

Mr. John Yakabuski: I might even support the motion.

Mr. Dave Levac: I’m looking forward to that, because you had me at “hello” and I hope I don’t get you at “goodbye.”

The Chair (Mr. David Oraziotti): Any further comments? All those in favour? Opposed? The motion is lost.

Government motion number 38: Mr. Levac.

Mr. Dave Levac: I move that section 20 of the bill be struck out and the following substituted:

“Application

“20(1) Subsections 19(1) and (2) apply with respect to contracts entered into on or after the day on which this subsection comes into force.

“Same

“(2) Subsection 19(3) applies with respect to contracts entered into on or after the day on which this subsection comes into force.

“Same

“(3) Subsection 19(4) applies with respect to contracts entered into on or after the day on which this subsection comes into force.

“Same

“(4) Subsection 19(5) applies with respect to contracts entered into on or after the day on which this subsection comes into force.”

Provisions of the bill dealing with the right of cancellation, consumer liabilities on cancellation and the right to return of payments have been significantly revised to make them easier to follow. The amendments deal with transitional matters. I recommend support of the amendment.

The Chair (Mr. David Orazietti): Any further comments?

All those in favour? Opposed? The motion is carried.

Shall section 20, as amended, carry? Carried.

Government motion 39.

Mr. Dave Levac: I move that subsection 21(4) of the bill be struck out and the following substituted:

“When given

“(4) Where notice of cancellation is given other than by personal delivery, the notice is deemed to have been given to the supplier when delivered or sent in accordance with subsection (3).

“When effective

“(5) Unless otherwise prescribed, if a contract is cancelled pursuant to section 19, the cancellation takes effect on such day as is prescribed or as is determined in accordance with the regulations.

“Extended meaning of contract

“(6) For the purposes of subsections(1), (2) and (3) and 23(1), (2) and (3), the term ‘contract’ is deemed to include such other agreements as may be prescribed between the consumer and the retailer or its affiliates.”

These provisions dealing with the right of cancellation, consumer liabilities on cancellation and the right to demand return of payments have been significantly revised to make them easier to follow. Again, this is technical in nature, but I did not deem it as such and do recommend passing it.

The Chair (Mr. David Orazietti): Any further comments?

Seeing none, all those in favour? Opposed? The motion is carried.

Shall section 21, as amended, carry? Carried.

Government motion 40.

Mr. Dave Levac: Mr. Yakabuski, this is the one I was making reference to earlier.

I move that section 22 of the bill be struck out and the following substituted:

“Cancellation fees and other obligations

“Cancellations, s.19(1), (2) or (3)

“22(1) A consumer who cancels a contract under subsection 19(1), (2) or (3) is not liable for,

“(a) any obligations in respect of the cancellation, including obligations purporting to be incurred as cancellation charges, administration charges or any other charges or fees; or

“(b) any monetary obligations under the contract respecting any period after the cancellation takes effect.

“Same, s.19(4) and (5)

“(2) A consumer who cancels a contract under subsection 19(4) or (5) is liable for,

“(a) such class or classes of obligations, including charges or fees, in respect of the cancellation as may be prescribed and no others, but in no case is the consumer liable for any monetary obligations that are prescribed as excluded from liability or for more than any prescribed amount of such monetary obligations or any amount determined in accordance with the regulations; and

“(b) such class or classes of monetary obligations under the contract as may be prescribed, respecting any period after the cancellation takes effect, but in no case is the consumer liable for more than any prescribed amount of such obligations or any amount determined in accordance with the regulations.”

In a nutshell, we’ve taken exactly what you’ve been talking about and turned it into the framework of the regulation we’re talking about, ensured that we mentioned that there is removal of cancellation fees where it’s not appropriate, but including them in the cancellation of a contract where it is appropriate.

Mr. John Yakabuski: Maybe I could ask Mr. Chiarelli a question, because I know he’s going to be supporting this amendment. So “a consumer who cancels a contract under subsection 19(4) or (5) is liable for,

“(a) such class or classes of obligations, including charges or fees, in respect of the cancellation as may be prescribed and no others,” and it goes on further.

Could you tell me what you would recommend as a fee in that case?

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Mr. Bob Chiarelli: We’d have to sit down and discuss it.

Mr. John Yakabuski: Touché.

The Chair (Mr. David Orazietti): Any further comments?

Mr. John Yakabuski: I have no further comment. Thank you very much.

The Chair (Mr. David Orazietti): Mr. Tabuns, go ahead.

Mr. Peter Tabuns: Could Mr. Levac just tell us what the appropriate charges are for cancellation and what you consider inappropriate charges?

Mr. Dave Levac: As I indicated before, when the regulatory stream is being cooked, there's going to be some consultation. There will be some input from the agencies, there will be input from consumers and there will be input from many people and sources, and then we'll be working with the government to create that. I think there are some offers from the industry to provide summaries of the types of fees that are out there. We'll take all of those into consideration, and when the regulations come out, that will be adopted.

Further, to the other possible part of your question, was that what would constitute our being able to say the fees are not charged, or is that okay?

Mr. Peter Tabuns: Which charges do you consider legitimate, and which do you consider not legitimate?

Mr. Dave Levac: That will come out as a result of this consultation.

Mr. Peter Tabuns: So you haven't determined, at this point, which of them and which column?

Mr. Dave Levac: No, there has been no determination. As a matter of fact, I think it's better to do it that way, so that if there are logical reasons why an existing charge is there, we want everyone to have the opportunity to tell us, "We don't think that one is legitimate," or if the industry comes in and says, "That is legitimate, and here's why," we want all of that put on the table.

We don't want to enter this one into a snap response to simply say there is no logic for that being there. I honestly do believe that that is the intent of why we're putting this in the stream of regulation and allowing the industry and the consumer to have a say on what those fees would be.

Mr. Peter Tabuns: Okay. I understand what you're saying.

The Chair (Mr. David Oraziotti): Anything else on this matter?

Seeing none, all those in favour of government motion 40? Opposed? Carried.

Shall section 22, as amended, carry? Carried.

The Chair (Mr. David Oraziotti): Government motion 41.

Mr. Dave Levac: I move that section 23 of the bill be struck out and the following substituted:

"Refunds on cancellation

"Cancellation, s.19(1) or (3)

"23(1) Within such time period as may be prescribed, after a cancellation takes effect under subsection 19(1) or (3), the supplier shall refund to the consumer any amount paid by the consumer under the contract.

"Same, s.19(2)

"(2) Within such time period as may be prescribed, after a cancellation under subsection 19(2) takes effect, the supplier shall refund to the consumer the amount prescribed by regulation or determined in accordance with the regulations.

"Same, s.19(4)

"(3) Within such time period as may be prescribed, after a cancellation under subsection 19(4) takes effect, the supplier shall refund to the consumer the amount, if

any, prescribed by regulation or determined in accordance with the regulations."

The right of cancellation and consumer liabilities on cancellation and the right to return payments have been significantly revised to make them easier to follow. This was a continuation of the previous motions that simply made the flow of this process a lot easier.

The Chair (Mr. David Oraziotti): Any further comments?

All those in favour? Opposed? Carried.

Shall section 23, as amended, carry? Carried.

The Chair (Mr. David Oraziotti): Motion 42, Mr. Levac.

Mr. Dave Levac: I move that section 24 of the bill be struck out and the following substituted:

"Return of prepayment

"24. Within such time period as may be prescribed, after a cancellation under subsection 19(2), (4) or (5) takes effect, the supplier shall refund any amount paid by the consumer under the contract before the day the cancellation took effect in respect of electricity or gas that was to be sold on or after that day."

Very similar logic behind the last amendment, Mr. Chairman, and I suggest we approve this.

Mr. John Yakabuski: I guarantee it will be approved.

The Chair (Mr. David Oraziotti): Any further comment?

All those in favour? Opposed? Carried.

Mr. Dave Levac: I'm glad to see everybody's hand up.

The Chair (Mr. David Oraziotti): Shall section 24, as amended, carry? Opposed? Carried.

Section 25: Mr. Levac.

Mr. Dave Levac: As committed, Mr. Chairman, this is a technical motion.

I move that section 25 of the bill be struck out and the following substituted:

"Retailer to ensure reading of consumer's meter

"25(1) If a consumer gives notice of a cancellation under subsection 21(2) with respect to a contract for the provision of electricity, the retailer shall promptly notify the distributor that the contract has been cancelled and the distributor shall read the consumer's electricity meter within the prescribed period.

"Retailer responsible for additional costs

"(2) The retailer is responsible for the payment to the distributor of any additional costs that are incurred by the distributor to ensure compliance with this section."

The Chair (Mr. David Oraziotti): Any further comments? Seeing none, all those in favour? Opposed? The motion is carried.

Shall section 25, as amended, carry? Carried. Thank you.

Number 44: Mr. Levac, go ahead.

Mr. Dave Levac: Thank you, Mr. Chairman. Another technical amendment, on section 26 of the bill.

I move that section 26 of the bill be struck out and the following substituted:

"No cause of action for cancellation

“26. No cause of action against the consumer arises as a result of the cancellation of a contract under this part.”

This reflects the reordering and the renumbering of the cancellation-related provisions, and that’s all we’re doing there.

The Chair (Mr. David Oraziotti): Any further comment? All those in favour? Opposed? The motion is carried.

Shall section 26, as amended, carry? Thank you.

Number 27, motion 45: Mr. Levac.

Mr. Dave Levac: Technical in nature, Mr. Chairman.

I move that section 27 of the bill be struck out and the following substituted:

“Right of action in case of dispute

“27. A consumer may commence an action against the supplier to recover the amount provided in subsection 28(2) and in addition may seek such other damages or relief as are provided in subsection 28(3),

“(a) if the consumer has cancelled a contract under this part; or

“(b) if the contract is deemed to be void under section 16 and,

“the consumer has not received a refund within such time period as may be prescribed after the effective date of cancellation or the day the contract is deemed void.”

This is to fix the 15-day period.

The Chair (Mr. David Oraziotti): Any further comment? All those in favour? Opposed? The motion is carried.

Shall section 27 carry, as amended? Carried.

Government motion 46: Mr. Levac.

Mr. Dave Levac: Another technical amendment.

I move that clauses 28(2)(a), (b) and (c) of the bill be struck out and the following substituted:

“(a) in the case of a cancellation under subsection 19(2), (4), (5), all of the money paid by the consumer under the contract;

“(b) in the case of a cancellation under subsection 19(1) or (3), twice the amount of the money paid by the consumer under the contract; and

“(c) in the case of a contract that is deemed to be void, twice the amount of the money paid by the consumer under the contract.”

These are cross-references and are substituted under section 19. The amendments are technical but required.

The Chair (Mr. David Oraziotti): Further debate? All those in favour? Opposed? It’s carried.

Number 47: Mr. Levac.

Mr. Dave Levac: Thank you, Mr. Chairman. Another technical amendment: I move that subsection 28(4) of the bill be amended by striking out “in the agreement” at the end and substituting “in the contract or agreement”.

That’s basically verbiage that needs to be to ensure that there is consistent language in the subsection and to avoid confusion. I really highly recommend that this one be passed.

The Chair (Mr. David Oraziotti): Right. Any further comments? All those in favour? Opposed? It’s carried.

Shall section 28, as amended, carry? Thank you.

In section 29 there are no proposed amendments. Shall it carry? Carried. Thank you.

Government proposal for a new section, 29.1: Mr. Levac, number 48.

Mr. Dave Levac: Thank you, Mr. Chairman. I move that the bill be amended by adding the following section:

“Review of part II of act

“29.1(1) The minister may require the board to review part II of the act and the regulations made under part II three years after this part comes into force.

“Report

“(2) If a review is required by the minister under subsection (1), the board shall prepare a report as expeditiously as possible on its review, and in the report, the board may recommend changes to part II and the regulations made under part II.”

This section allows the minister to order a review of part II of the Energy Consumer Protection Act three years after it comes into force.

The Chair (Mr. David Oraziotti): Any further comment? Mr. Yakabuski?

Mr. John Yakabuski: I’m just wondering, is there going to be an Ontario Energy Board after three years? You’re taking over all the responsibilities. I’m just wondering if you’re going to just disband it.

Mr. Dave Levac: To my knowledge, the answer is yes, there will be.

The Chair (Mr. David Oraziotti): Further comments?

Shall section 29.1 carry? Thank you.

Section 30, number 49: Mr. Levac, go ahead.

Mr. Dave Levac: We have a technical motion in front of you. I move that the definition of “unit” in section 30 of the bill be amended by striking out “and” at the end of clause (c) and substituting “or”.

This confirms that a unit means any, as opposed to all.

The Chair (Mr. David Oraziotti): Any further comments?

All those in favour? Opposed? It’s carried.

Number 50: Mr. Levac.

Mr. Dave Levac: I move that the definition of “unit sub-meter” in section 30 of the bill be amended by striking out “a suite meter provider” and substituting “a unit sub-meter provider”.

Both units of sub-metering and the smart meter is a provider—technical in nature.

The Chair (Mr. David Oraziotti): Any further comment?

Seeing none, all those in favour? Opposed? It’s carried.

Shall section 30, as amended, carry? Opposed? Okay, that’s carried.

Section 31: I don’t see any amendments there. Shall it carry? Carried.

Section 32, number 51: Go ahead, Mr. Levac.

Mr. Dave Levac: Another technical motion.

I move that subsection 32(2) of the bill be struck out and the following substituted:

"Installation of suite meters required

"(2) Such persons or classes of persons as may be prescribed shall, in such circumstances as may be prescribed and subject to such conditions as may be prescribed, have a suite meter installed by a suite meter provider in such properties or classes of properties as may be prescribed and for such consumers"—I almost got through this without laughing at how many times I've said "prescribed"; sorry—"or classes of consumers as may be prescribed."

The Chair (Mr. David Oraziatti): Any further comment?

All those in favour?

Mr. John Yakabuski: I may prescribe something.

The Chair (Mr. David Oraziatti): Thank you. Carried.

Number 52: Mr. Levac.

Mr. Dave Levac: It's getting late. Where am I headed?

Interjection: Number 52.

Mr. Dave Levac: Fifty-two.

The Chair (Mr. David Oraziatti): Thanks, guys.

Mr. Dave Levac: Can somebody tell me where I'm prescribed?

I move that subsection 32(3) of the bill be struck out and the following substituted:

"Installation of meters prohibited"—I just looked at something different. I apologize for that.

"(3) Except"—

Interjection.

Mr. Dave Levac: Okay. Because it's so technical, we're pulling it.

Interjection: It only has "prescribed" in it once.

Mr. Dave Levac: I think that's why they pulled it. There weren't enough prescriptions.

Mr. John Yakabuski: It's under-prescribed.

Mr. Dave Levac: I'd like to withdraw the motion, Mr. Chairman.

The Chair (Mr. David Oraziatti): Thank you. Withdrawn.

Shall section 32, as amended, carry? Carried. Okay, thank you.

Government motion number 53: Mr. Levac.

Mr. Dave Levac: I think I'm on track now, Mr. Chairman.

I move that subsection 33(1) of the bill be struck out and the following substituted:

"Use of suite meters for billing permitted

"33.(1) Subject to subsection (6), if a suite meter is installed in accordance with section 32 or in such circumstances as may be prescribed in respect of a unit of a prescribed class of properties, a suite meter provider may, in the prescribed circumstances, subject"—all right; we have to put this on TV in bloopers—"to the prescribed conditions and for the prescribed consumers or prescribed classes of consumers, bill the consumer based on the consumption or use of electricity by the consumer in respect of the unit as measured by the suite meter."

It's technical in nature; trust me.

Mr. John Yakabuski: It certainly is.

The Chair (Mr. David Oraziatti): Any further comments?

All those in favour? Carried. Thank you.

Number 54: Mr. Levac.

Mr. Dave Levac: I move that subsection 33(3) of the bill be struck out and the following substituted:

"Use of meters prohibited

"(3) Except as provided in subsections (1) and (2), no person shall bill a prescribed class of consumers for electricity consumed in a unit of a prescribed class of properties as measured by a suite meter."

The Chair (Mr. David Oraziatti): Any further comments?

All those in favour? Opposed? It's carried.

Number 55: Mr. Levac.

Mr. Dave Levac: I move that subsection 33(6) of the bill be struck out and the following substituted:

"Requirement to provide information

"(6) If a suite meter is installed in accordance with section 32 in respect of a unit of a prescribed class of properties for a prescribed class of consumers, the suite meter provider or such other persons or class of persons as may be prescribed shall, in the prescribed circumstances, provide the consumer or such other persons or class of persons as may be prescribed with such information as may be prescribed, at such time as may be prescribed, presented in such form and manner as may be prescribed.

"No billing of consumer based on time of use

"(7) A regulation made in respect of subsection (6) may provide that the suite meter provider shall not bill the consumer based on the consumption or use of electricity by the consumer in respect of the unit, if at the time of the billing there is outstanding non-compliance with subsection (6)."

The Chair (Mr. David Oraziatti): Any further comments?

All those in favour? Opposed? Carried.

Shall section 33 carry, as amended? Carried.

Section 34; motion 56R, a replacement motion. I understand that we're going with the original motion, not the replacement, and that right at the end of clause (u), where it says "subsection 21(7)," that's supposed to say "(6)," and then we're okay with the motion as presented.

Mr. Dave Levac: "Subsection (4)" rather than "subsection (6)"?

The Chair (Mr. David Oraziatti): Albert, would you like to comment on this, please?

Mr. Albert Nigro: For the record, my name is Albert Nigro. I'm with the Office of Legislative Counsel.

We just passed the motion, and unless counsel from the ministry tell me I'm misreading the motion, we need to make a regulation that extends the definition of "contract" for a motion we just made, and it was "subsection (6)," not "subsection (4)." I made a mistake when I transcribed it this morning, and I apologize to the committee for that, but it is, as I read the motion a minute ago, "subsection (6)."

Mr. Dave Levac: Mr. Chairman, could I provide counsel with an opportunity to respond?

The Chair (Mr. David Oraziotti): That's fine. Would you approach the microphone and state your name for the record.

Mr. Dan Shear: Dan Shear, legal counsel with the Ministry of Energy and Infrastructure. Yes, that is the correct interpretation. The change, as legislative counsel has indicated, is the one we would like to see introduced into that paragraph in the motion.

The Chair (Mr. David Oraziotti): Mr. Levac, do you want to read it all in with "subsection (6)"?

Mr. Dave Levac: Yes, and I've made note under (u) to say "(6)," not "(7)."

The Chair (Mr. David Oraziotti): Go ahead.

Mr. Dave Levac: I move that subsection 34(3) of the bill be struck out and the following substituted:

"Same, part II

"(3) For the purposes of part II, the Lieutenant Governor in Council may make regulations,

"(a) prescribing the amount of electricity and gas for the purposes of the definition of 'consumer' in section 2;

"(b) prescribing forms, media and formats for the purposes of the definition of 'text-based' in section 2 and forms, media and formats that are excluded from the definition;

"(c) prescribing formats for electronic information for the purposes of subsection 7(4);

"(d) prescribing requirements for the purposes of subsection 7(5);

"(e) governing disclosure requirements for the purposes of subsection 8(1);

"(f) prescribing the manner of determining the price a retailer charges for electricity and the requirements used in determining it for the purposes of section 9;

"(g) governing unfair practices;

"(h) governing consumer contracts;

"(i) prescribing the persons or classes of person acting on behalf of the account holder for the purposes of subsection 11(4);

"(j) for the purposes of subsection 12(1),

"(i) governing information required to be contained in contracts, the form and manner of its presentation and the circumstances under which the information to be provided,

"(ii) governing what information is required in the information and documents that must accompany contracts, the languages in which the information and documents may be provided, the form and manner of their presentation and the circumstances under which they are to be provided, and

"(iii) providing that such a regulation prevails over any code governing the conduct of a retailer issued by the board under section 70.1 of the Ontario Energy Board Act, 1998 or any rules that apply to gas marketing made by the board under clause 44(1)(c) of the Ontario Energy Board Act, 1998;

"(k) for the purposes of subsection 12(2), governing acknowledgments and signatures, prescribing their form

or manner and respecting information and matters to which they apply;

"(l) governing information, requirements or obligations that shall not be contained in or accompany any contract;

"(m) governing the time in which a supplier must deliver a text-based copy of a contract to a consumer for the purposes of subsection 13(1);

"(n) prescribing the class or classes of consumers that may receive a contract in a prescribed form and within a prescribed time for the purposes of subsection 13(2);

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"(o) governing acknowledgment of delivery of contracts and prescribing the time or the manner of determining the time in which the consumer is deemed to have acknowledged receipt of the contract for the purposes of section 14;

"(p) governing the verification under section 15, including,

"(i) the conditions and qualifications of the persons or class of persons who verified the contract,

"(ii) the persons or class or persons who are excluded from verifying contracts, and

"(iii) the notice given by a consumer under subsection 15(5) not to have the contract verified;

"(q) prescribing the circumstances in which a contract is deemed void and respecting the number of days or the manner of calculating the number of days after which a contract is deemed void for the purposes of section 16;

"(r) governing the renewal, extension or amendment of contracts under part II;

"(s) prescribing circumstances under which a contract may be cancelled under subsection 19(4) and the prescribed period of notice a consumer must give to cancel a contract under subsection 19(5);

"(t) governing the cancellation of contracts by a consumer, including governing notice of cancellation of a contract and when a cancellation takes effect;

"(u) prescribing what agreements may be included in the term 'contract' for the purposes of subsection 21(7);

"(v) respecting the class of obligations, including charges or fees and amount of the obligations for the purposes of section 22 and respecting the amount of obligations that are excluded from liability, as well as the amount of such monetary obligations or any other amount;

"(w) governing the liability of consumers who cancel a contract under subsections 19(4) and (5) and distinguishing between cancellations under subsections 19(4) and (5);

"(x) governing refunds to the consumer after a cancellation of a contract takes effect, the time or the manner of calculating the time in which a refund must be paid and the amount of the refund or the manner of determining the refund for the purposes of section 23;

"(y) prescribing the time period or the manner of determining the time period in which a refund is to be paid to a consumer for the purposes of section 24;

“(z) governing the period in which a distributor is to read a consumer’s electricity meter under subsection 25(1).”

I want to go into the Guinness Book of Records with that one.

Technical amendments are required to ensure that there is sufficient regulatory-making authority to implement the provisions of part II. That’s precisely what we made the commitment to do inside of regulations.

The Chair (Mr. David Orazietti): Mr. Yakabuski, go ahead.

Mr. John Yakabuski: I, unfortunately, had to step out of the room. Is there any possible way that Mr. Levac could read this again?

Mr. Dave Levac: I move that subsection—

The Chair (Mr. David Orazietti): Okay, Mr. Yakabuski. Thanks.

Any further comments? All those in favour of motion 56? Opposed? Carried.

Mr. Levac: Motion 57.

Mr. Dave Levac: I move that subsection 34(4) of the bill be amended by adding the following clauses:

“(b.1) prescribing classes of meters, classes of properties and circumstances for the purposes of the definition of ‘unit meter’ in section 30; ...

“(d.1) prescribing meters for the purposes of the definition of ‘unit sub-meter’ in section 30;”

Again, this is technical in nature to comply with the spirit with why we’re doing the regulations the way we are.

The Chair (Mr. David Orazietti): Any further comments? All those in favour? Opposed? The motion’s carried.

Number 58: Mr. Levac.

Mr. Dave Levac: This is technical in nature, as I committed to announce.

I move that clauses 34(j) and (k) of the bill be struck out and the following substituted:

“(j) prescribing, for the purposes of section 32, the persons or classes of persons who are required to install suite meters, the circumstances in which such persons or classes of persons are required to install suite meters, the circumstances in which a suite meter provider is permitted to install suite meters, the properties or classes of properties where they may or must be installed and the consumers or classes of consumers to which the regulation may or must apply;

“(k) prescribing, for the purposes of subsection 33(1), the circumstances in which that subsection applies, the conditions to which that subsection is subject, the circumstances in which a suite meter provider is permitted to bill consumers based on their consumption or use of electricity, the classes of properties in respect of which such billing is permitted and the consumers or classes of consumers who may or must be so billed;

“(1) prescribing, for the purposes of subsection 33(2), the conditions to which that subsection is subject, the circumstances in which a suite meter provider is required to bill consumers based on their consumption or use of

electricity, the classes of properties in respect of which such billing is permitted and the consumers or classes of consumers who may or must be so billed;

“(m) prescribing classes of consumers and classes of properties for the purposes of subsection 33(3);

“(n) prescribing, for the purposes of subsection 33(6),

“(i) classes of properties and classes of consumers,

“(ii) persons or classes of persons, and

“(iii) information and the form and manner of the presentation of the information.”

The Chair (Mr. David Orazietti): Any further comment? Seeing none, all those in favour? Opposed? Carried.

Shall section 34, as amended, carry? Carried.

Section 35: No amendments were presented. Shall it carry? Carried.

Section 36, government amendment 59: Mr. Levac, go ahead.

Mr. Dave Levac: I move that section 36 of the bill be amended by adding the following subsection:

“(1.1) Section 2 of the act is amended by adding the following subsection:

“Exception, “security”

“(1.4) The definition of “security” in subsection (1) does not apply in respect of section 30.1.”

This is technical in nature to accommodate electricity distributors as to deposit charges for electricity.

The Chair (Mr. David Orazietti): Any further comments? All those in favour? Opposed? Carried.

Number 60: Mr. Levac?

Mr. Dave Levac: This is technical in nature as well.

I move that section 30.1 of the Electricity Act, 1998, as set out in subsection 36(3) of the bill, be amended by adding the following subsection:

“Definition

“(4) For the purposes of this section,

“security” has the meaning as may be prescribed by regulation.”

The Chair (Mr. David Orazietti): Further comment? All those in favour? Opposed? Carried.

Number 61.

Mr. Dave Levac: I move that subsection 31(1) of the Electricity Act, 1998, as set out in section 36(4) of the bill, be struck out and the following substituted:

“Termination of service

“31(1) A distributor or suite meter provider may shut off the distribution of electricity to a property,

“(a) if any amount payable by a person for the distribution or retail of electricity to the property pursuant to section 29 or part III of the Energy Consumer Protection Act, 2009 is overdue; and

“(b) if the shutting off of the distribution of electricity to the property complies with any condition of a licence of the distributor or suite-meter provider included in the licence under clause 70(2)(d.1) of the Ontario Energy Board Act, 1998.”

This is a beneficial amendment to the electricity disconnection provision of the Electricity Act, 1998, in order to reference the appropriate Ontario Energy Board

Act provision that deals with ensuring compliance with licence conditions.

The Chair (Mr. David Orazietti): Further comment? Those in favour? Opposed? Carried.

Number 62: Mr. Levac.

Mr. Dave Levac: I move that section 31 of the Electricity Act, 1998, as set out in subsection 36 (4) of the bill, be amended by adding the following subsection:

“Same

“(6.1) For the purposes of subsection (6), where a regulation requires that a thing be done, a step be taken or information be provided by a certain date, a distributor shall not shut off the distribution of electricity to the property before the time prescribed by regulation has elapsed.”

This new provision clarifies that an electricity distributor must not disconnect a consumer prior to the time specified in the regulation. If a regulation specifies that a consumer must take certain steps or do certain things within a time prescribed, the electricity distributor must not take action to disconnect in advance of the time so prescribed. That’s just to avoid somebody being cut off before they take the proper steps.

The Chair (Mr. David Orazietti): All those in favour? Opposed? Carried.

Number 63.

Mr. Dave Levac: This is technical in nature again, as committed.

I move that the bill be amended by adding the following subsection:

“(6.1) Subsection 53.18(1) of the act is amended by striking out ‘a regulation’ and substituting ‘a regulation, the Energy Consumer Protection Act, 2009’.”

This is a technical amendment that’s required to ensure the smooth transition from existing smart metering provisions to the new framework of suite metering.

The Chair (Mr. David Orazietti): Any further comment? All those in favour? Opposed? The motion is carried.

Number 64.

Mr. Dave Levac: Technical in nature again.

I move that subsection 36(7) of the bill be struck out.

The purpose of the amendment to strike it out is because it’s addressed in the previous amendment.

The Chair (Mr. David Orazietti): Any further comment? All those in favour? Opposed? The motion is carried.

Number 65.

Mr. Dave Levac: I move that subsection 114(1) of the Electricity Act, 1998, as amended by subsection 36(1) of the bill, be further amended by adding the following clause:

“(f.0.6) prescribing the meaning of ‘security’ for purposes of section 30.1;”

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The Chair (Mr. David Orazietti): Albert, do you want to add to the discussion?

Mr. Albert Nigro: Yes. If I could briefly speak on the record, there’s a mistake in the opening language. It’s

only a mistake in the language introducing the amendment and not the amendment itself. It says, “subsection 36(1)”; it’s meant to say “subsection 36(10).” If you look above it, you can see the correct reference in the motion.

The Chair (Mr. David Orazietti): Okay. Any further comment?

Mr. Dave Levac: I don’t need to restate, right? That’s just an explanation?

The Chair (Mr. David Orazietti): Right.

All those in favour? Opposed? It’s carried.

Shall section 36, as amended, carry? Carried.

Section 37: number 66.

Mr. Dave Levac: This is technical again in nature.

I move that clause (d) of the definition of “enforceable provision” in section 3 of the Ontario Energy Board Act, 1998, as set out in subsection 37(1) of the bill, be amended by striking out “25.35”.

It just doesn’t apply.

The Chair (Mr. David Orazietti): Okay. Any further comment? All those in favour? Opposed? Carried.

Number 67.

Mr. Dave Levac: I move that subsection 28.7(1) of the Ontario Energy Board Act, 1998, as set out in subsection 37(3) of the bill, be struck out and the following substituted:

“Directives, gas marketers and electricity retailers

“28.7(1) The minister may issue, and the board shall implement, directives that have been approved by the Lieutenant Governor in Council in relation to the marketing of gas and the retailing of electricity in Ontario.”

The Chair (Mr. David Orazietti): Any further comment? All in favour? Opposed? Carried.

Number 68.

Mr. Dave Levac: This is technical in nature.

I move that paragraphs 1, 2, 3, 4, 5, 6, 7 and 8 of subsection 28.7(4) of the Ontario Energy Board Act, 1998, as set out in subsection 37(3) of the bill, be struck out and the following substituted:

“1. Conditions regarding the operations and management and business practices of a gas marketer or retailer of electricity, including but not limited to the conduct of employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity.

“2. Activities, conduct, or practices that must, may or may not be undertaken by a gas marketer or retailer of electricity, its employees, agents or third parties acting on behalf of the gas marketer or the retailer of electricity.

“3. Conditions requiring or imposing standards that are required to be met by a gas marketer or retailer of electricity or its employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity, including standards related to,

“i. education, training, certification and communications,

“ii. business practices,

“iii. performance standards,

“iv. background verifications and assessments as required under paragraph 6,

“v. record keeping,

“vi. contracting, including standards related to contracting with certain specified classes of vulnerable consumers, and

“vii. such other matters as may be specified in the directive.

“4. Conditions requiring a gas marketer or retailer of electricity or its employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity to provide such information orally or in writing to a consumer or a member of a class of consumers specified in the directive, the board or the ministry or to such other person or entity as may be specified in the directive, in the circumstances specified in the directive and within such time or times as may be specified in the directive.

“5. Conditions requiring a gas marketer or retailer of electricity to meet criteria or requirements related to identification as specified in the directive, including criteria or requirements related to the identification credentials or badges or other forms of identification provided to its employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity as may be specified in the directive.

“6. Conditions requiring a gas marketer or retailer of electricity to meet specific criteria and requirements related to background verification and assessment of its employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity, including the requirement to establish a process or processes to conduct the verifications and assessments, and the criteria and requirements may include the time or times at which the verification and assessments must be performed.

“7. Conditions requiring a gas marketer or retailer of electricity to take the following steps or do the following things in respect of its employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity:

“i. To establish a process or to follow or adhere to a process or processes as are prescribed by regulations or are approved by an order of the board, for the following activities in respect of its employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity:

“A. licensing, including renewal, suspension and cancellation of licences,

“B. bonding and insurance,

“C. examination for credentials, certificates, accreditations or designations,

“D. the creation of codes of conduct, best practices and policies,

“E. requirements in relation to independence from or permissible investment in or association with the gas marketer or retailer of electricity or another licensee, and

“F. such other matters as may be specified in the directive.

“ii. To conduct, at such times as may be specified in the directive, the activities referred to in this section in relation to each of its employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity.

“iii. To ensure that its employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity adhere to the process or processes referred to in this section and, in particular, obtain any specified credentials, accreditations or designations referred to in this section by such time or times as may be specified in the directive.

“8. Conditions identifying provisions which must be included in any arrangements or agreements, including arrangements or agreements relating to the marketing of gas or the retailing of electricity with specified classes of consumers, entered into by the gas marketer or retailer of electricity or third parties acting on behalf of the gas marketer or retailer of electricity and such conditions may specify or provide that the arrangements or agreements must contain specific conditions, restrictions, criteria or requirements relating to the arrangements or agreements.”

I give high praise to my grade 3 reading teacher.

The Chair (Mr. David Oraziotti): Any further comments?

All those in favour? Opposed? The motion is carried.

Number 69: Mr. Levac.

Mr. Dave Levac: Technical in nature.

I move that subsection 28.7(5) of the Ontario Energy Board Act, 1998, as set out in subsection 37(3) of the bill, be struck out and the following substituted:

“Verification

“(5) For the purposes of the verification of a contract required under part II of the Energy Consumer Protection Act, 2009, a directive,

“(a) may require the board to prepare specified information, including preparing the information in languages specified in the directive, and to do so within the time specified in the directive; and

“(b) may require that the board require that gas marketers or retailers of electricity or specified classes of them,

“(i) use the information in the manner specified in the directive, and

“(ii) take such steps as may be specified in the directive to ensure that persons engaged by them in activities related to verification use the information in the manner specified in the directive.”

The Chair (Mr. David Oraziotti): Any further comment?

All those in favour? Opposed? The motion is carried.

Number 70: Mr. Levac.

Mr. Dave Levac: I move that subsection 42(2.1) of the Ontario Energy Board Act, 1998, as set out in subsection 37(4) of the bill, be struck out and the following substituted:

“Security

“(2.1) In exercising its authority under subsection 50(4) of the Public Utilities Act or any other act, where a gas distributor requires security for the payment of charges related to gas by or on behalf of a consumer or a member of a class of consumers prescribed by regulation, the gas distributor shall,

“(a) meet the criteria prescribed by regulation; and

“(b) satisfy the criteria or requirements in any order made by the board or rule issued by the board.”

This amendment is to have security provisions of gas distributors and is designed to reference requirements by the OEB orders and rules, as well as regulations.

The Chair (Mr. David Oraziotti): Any further comments?

All those in favour of number 70? Opposed? Carried.

Number 71: Mr. Levac.

Mr. Dave Levac: This is technical in nature, Mr. Chairman.

I move that section 42 of the Ontario Energy Board Act, 1998, as amended by subsection 37(4) of the bill, be further amended by adding the following subsection:

“Definition

“(2.4) For the purposes of subsections (2.1), (2.2) and (2.3),

“‘security’ has the meaning as may be prescribed by regulation.”

The Chair (Mr. David Oraziotti): Any further comment?

All those in favour? Opposed? Carried.

Number 72: Mr. Levac.

Mr. Dave Levac: I move that subsection 42(5) of the Ontario Energy Board Act, 1998, as set out in subsection 37(4) of the bill, be struck out and the following substituted:

“Stopping the distribution of gas

“(5) In exercising its authority under section 59 of the Public Utilities Act or any other act, a gas distributor may stop the distribution of gas to a property,

“(a) if any amount payable by a person for the distribution or sale of gas is overdue; and

“(b) if the stopping of the distribution of gas to the property complies with rules made under clause 44(1)(b.1).”

The Chair (Mr. David Oraziotti): Any further comment?

Those in favour? Opposed? It’s carried.

Number 73: Mr. Levac.

Mr. Dave Levac: I move that section 42 of the Ontario Energy Board Act, 1998, as amended by subsection 37(4) of the bill, be further amended by adding the following subsection:

“Same

“(10.1) For the purposes of subsection (10), where a regulation requires that a thing be done, a step be taken or information be provided by a certain date, a gas distributor shall not stop the distribution of gas to the property before the time prescribed by regulation has elapsed.”

Previously discussed.

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The Chair (Mr. David Oraziotti): Any further comment?

All those in favour? Opposed? Carried.

Number 74: Mr. Levac.

Mr. Dave Levac: I move that section 42 of the Ontario Energy Board Act, 1998, as amended by subsection 37(4) of the bill, be further amended by adding the following subsection:

“Same

“(10.2) Subsections (10) and (10.1) apply despite the Public Utilities Act.”

The Chair (Mr. David Oraziotti): Any further comments?

All those in favour? Opposed? Carried.

Number 75.

Mr. Dave Levac: This is technical in nature.

I move that subsection 37(5) of the bill be struck out.

This is providing the OMB the authority over the settling of the requirements associated with invoices issued to consumers by the gas distributors.

The Chair (Mr. David Oraziotti): Any further comments?

All those in favour? Opposed? It’s carried.

Number 76: Mr. Levac.

Mr. Dave Levac: Another one that’s technical in nature.

I move that subsection 44(1) of the Ontario Energy Board Act, 1998, as amended by subsection 37(6) of the bill, be further amended by adding the following clause:

“(b.3) relating to any matter in respect of invoices issued in respect of gas to consumers, including meeting such requirements as may be provided for by the board or being in a form approved by the board;”

The Chair (Mr. David Oraziotti): Any further comment?

All those in favour? Opposed? Carried.

Number 77: Mr. Levac.

Mr. Dave Levac: Another one that’s technical in nature.

I move that clause 44(1)(c.1) of the Ontario Energy Board Act, 1998, as set out in subsection 37(6) of the bill, be struck out and the following substituted:

“(c.1) relating to any matter, prescribed by regulation, in respect of gas marketers in relation to gas marketing, subject to any regulations made under this act or under the Energy Consumer Protection Act, 2009;”

The Chair (Mr. David Oraziotti): Further comment?

All those in favour? Opposed? Carried.

Number 78.

Mr. Dave Levac: Another technical change.

I move that subsection 51(1) of the Ontario Energy Board Act, 1998, as set out in subsection 37(7) of the bill, be amended by striking out “Subject to part V.1” at the beginning.

The Chair (Mr. David Oraziotti): Any comments?

All those in favour? Opposed? It’s carried.

Conservative motion number 78.1.

Mr. Dave Levac: Take over, John.

Mr. John Yakabuski: Just for a short period of time.

I move that subsection 78(2.3) of the Ontario Energy Board Act, 1998, as set out in subsection 37(13) of the bill, be struck out and the following substituted:

“Order re unit sub-meter provider

“(2.3) When authorized by the regulations, the board may make orders approving or fixing just and reasonable charges for unit sub-metering and a provider of a unit sub-meter that is the subject of such an order shall not charge for unit sub-metering except in accordance with the order.”

This would establish OEB oversight but only under prescribed conditions.

The Chair (Mr. David Oraziotti): Further comment?

Mr. Dave Levac: Yes. Off the top, it would, yes indeed, allow OEB oversight of sub-metering charges but only under prescribed circumstances. The government has included the option of rate regulation of the sub-metering sector, to the strength and protection of the consumer in this section.

The unit sub-meter providers currently operate as competitive businesses, with no rate regulation. However, local distribution companies installing smart meters are subject to rate regulation through the OEB.

A simpler approach that would achieve a similar effect and not immediately impose a rate regulation on the sub-metering sector would be to leave the existing section unproclaimed until it becomes necessary.

I think that that’s probably the direction that we want to go, and the government would make that commitment.

Mr. John Yakabuski: So you’re going to deal with that in regulation?

Mr. Dave Levac: It’s in proclamation. It’s whether we proclaim it or not.

Mr. John Yakabuski: Okay.

Mr. Dave Levac: Okay?

Mr. John Yakabuski: Well, listen, it’s the best that I’m going to get, because I sure as hell ain’t going to get this amendment passed. I’m looking at the numbers there.

Mr. Dave Levac: We’re unified.

The Chair (Mr. David Oraziotti): Any further comment?

All those in favour of the amendment? Opposed? The motion is lost.

Number 79: Mr. Levac.

Mr. Dave Levac: I move that subsection 37(13) of the bill be struck out and the following substituted:

“(13) Section 78 of the act is amended by adding the following subsection:

““Order re unit smart meter provider

“(2.2) No unit smart meter provider shall charge for unit smart metering except in accordance with an order of the board, which is not bound by the terms of any contract.”

“(13.1) Section 78 of the act is amended by adding the following subsection:

““Order re unit sub-meter provider

“(2.3) No unit sub-meter provider shall charge for unit sub-metering except in accordance with an order of the board, which is not bound by the terms of any contract.”

This allows rate regulation for unit smart meter licensees or distributors and sub-meter providers to come

into force at different times by permitting each to be proclaimed separately. This insertion helps to achieve a similar objective to what you were just talking about, Mr. Yakabuski. During proclamation, that’s when that would take place.

The Chair (Mr. David Oraziotti): Any further comment?

All those in favour? Opposed? The motion is carried.

Conservative amendment 79.1: Mr. Yakabuski.

Mr. John Yakabuski: Perhaps you’ll be dealing with 79.1 in 80, but I’ll read it into the record anyhow.

I move that subsection 37(19) of the bill be amended by adding the following clause to subsection 88(1) of the Ontario Energy Board Act, 1998:

“(g.6.0.3) for the purposes of subsection 78(2.3), prescribing circumstances in which the board may make orders approving or fixing just and reasonable charges for unit sub-metering;”

This would work with amendment 78.1 and a new provision would then be added to section 88, the regulation-making powers. This approach would allow, however, for regulations to be created in the future to address new circumstances where it becomes apparent that certain suite sub-metering installations or suite sub-metering providers ought to be subject to rate oversight by the OEB.

The Chair (Mr. David Oraziotti): Further comment?

Mr. Dave Levac: Ultimately, that’s where it will end up landing. The government has included the option of rate regulation in the sub-metering section to strengthen protections for the consumer in this section. The existing wording is consistent with the approach used elsewhere in the OEB act. The Ontario Energy Board, as an economic regulator, will be responsible for setting the parameters around rate regulation to ensure just and reasonable rates.

Upon proclamation—and I go back to what you’ve acknowledged—the OEB would be responsible for setting just and reasonable rates.

We believe that we’re going to end up in the same position as what you’re suggesting, not in the bill but rather in the regulatory stream or in the proclamation of what we just passed.

The Chair (Mr. David Oraziotti): Do you want to vote on it or do you want to withdraw it? Comment?

Mr. John Yakabuski: “Withdrawal” is not in my vocabulary, Mr. Chair. We will vote on the amendment.

The Chair (Mr. David Oraziotti): Given the discussion, let’s vote on it.

All those in favour? Opposed? The motion is lost. I appreciate your spirit.

Government motion number 80: Mr. Levac.

Mr. Dave Levac: I move that clause 88.1(1)(b) of the Ontario Energy Board Act, 1998, as set out in subsection 37(21) of the bill, be amended by striking out “as may be prescribed by regulation or”.

This is kind of technical in nature because of the OEB options that we’re going to provide.

The Chair (Mr. David Orazietti): Any further comment on 80?

Mr. John Yakabuski: Are we getting to the same point with this one as we were in your 79 amendment?

Mr. Dave Levac: Absolutely.

Mr. John Yakabuski: Okay. Thank you.

The Chair (Mr. David Orazietti): All those in favour? Opposed? The motion is carried.

Number 81: Mr. Levac.

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Ms. Helena Jaczek: This is a technical amendment, and I'm going to save Mr. Levac a little bit of his voice.

I move that paragraphs 1 and 2 of subsection 88.1(2) of the Ontario Energy Board Act, 1998, as set out in subsection 37(21) of the bill, be struck out and the following substituted:

"1. The operations, management and business practices of a gas marketer or retailer of electricity, including but not limited to the conduct of employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity.

"2. The activities, conduct or practices that must, may or may not be undertaken by the gas marketer or retailer of electricity, its employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity."

The Chair (Mr. David Orazietti): Any further comment?

All those in favour of number 81? Opposed? The motion is carried.

Number 82: Ms. Jaczek.

Ms. Helena Jaczek: Another technical amendment.

I move that paragraph 4 of subsection 88.1(2) of the Ontario Energy Board Act, 1998, as set out in subsection 37(21) of the bill, be amended by striking out the portion before subparagraph i and substituting the following:

"4. Standards that are required to be met by a gas marketer or a retailer of electricity or its employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity, including standards related to,"

The Chair (Mr. David Orazietti): Any further comments on number 82? All those in favour? Opposed? The motion is carried.

Number 83: Ms. Jaczek.

Ms. Helena Jaczek: Another technical amendment.

I move that subparagraph 4 vi of subsection 88.1(2) of the Ontario Energy Board Act, 1998, as set out in subsection 37(21) of the bill, be amended by striking out "standards for".

The Chair (Mr. David Orazietti): Any further comment? All those in favour? Opposed? The motion is carried.

Number 84: Ms. Jaczek.

Ms. Helena Jaczek: Another technical amendment.

I move that paragraphs 5, 6, 7 and 8 of subsection 88.1(2) of the Ontario Energy Board Act, 1998, as set out in subsection 37(21) of the bill, be struck out and the following substituted:

"5. Information that is to be provided orally or in writing by a gas marketer or retailer of electricity or its employees, agents or third parties acting on its behalf to a consumer or a member of a class of consumers prescribed by regulation, the board, the ministry or to such other person or entity as may be prescribed by regulation and the circumstances in which the information must be provided and the time or times within which such information must be provided.

"6. Identification, including criteria or requirements related to the identification credentials or badges or other forms of identification provided to the employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity.

"7. Background verification and assessment of the employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity, including the requirement to establish a process or processes to conduct the verifications and assessments and the criteria and requirements for the time or times at which the verification and assessments must be performed.

"8. The establishment of processes related to employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity, including the prescribing of conditions, requirements or criteria to be met by such processes, for the following activities:

"i. Business related activities, including,

"A. licensing, including renewal, suspension and cancellation of licences,

"B. bonding and insurance,

"C. examination for prescribed credentials, certificates, accreditations or designations,

"D. creation of codes of conduct, best practices and policies,

"E. requirements in relation to independence from or permissible investment in or association with a gas marketer or retailer of electricity or another licensee, and

"F. such other matters as may be prescribed by regulation.

"ii. The conduct of activities referred to in this section in relation to each of the employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity at such times as may be prescribed by regulation.

"iii. Ensuring that the employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity adhere to the processes referred to in this section and, in particular, obtain any prescribed credentials."

The Chair (Mr. David Orazietti): Any further comments on number 84?

All those in favour? Opposed? The motion is carried.

Government motion 85: Mr. Chiarelli.

Mr. Bob Chiarelli: I move that subsection 88.2(1) of the Ontario Energy Board Act, 1998, as set out in subsection 37(21) of the bill, be amended by striking out "Despite subsection 88.1(1) and" at the beginning.

That's just a technical amendment.

The Chair (Mr. David Oraziotti): Any further comment?

All those in favour? Opposed? The motion is carried.

Number 86: Mr. Chiarelli.

Mr. Bob Chiarelli: Another technical amendment.

I move that subsection 88.3(1) of the Ontario Energy Board Act, 1998, as set out in subsection 37(21) of the bill, be struck out and the following substituted:

“Powers of audit

“88.3(1) The board may appoint a person who meets the criteria as may be prescribed by regulation to audit the compliance of a gas marketer or retailer of electricity or its agents or employees with the requirements of,

“(a) any condition of a licence referred to in section 48 or 57; or

“(b) an enforceable provision.”

The Chair (Mr. David Oraziotti): Any further comment?

Seeing none, all those in favour? Opposed? The motion is carried.

Number 87: Mr. Chiarelli.

Mr. Bob Chiarelli: Another technical amendment.

I move that paragraph 3, subsection 88.3(5) of the Ontario Energy Board Act, 1998, as set out in subsection 37(21) of the bill, be struck out and the following substituted:

“3. Examining documents relating to the training, education or professional credentials, certificates, accreditations or other designations of the employees, agents or third parties for the gas marketer or retailer of electricity, including determining which credentials, certificates, accreditations or other designations the employee, agent or third party has or has not received.”

The Chair (Mr. David Oraziotti): Any comments?

All those in favour? Opposed? Carried.

Number 88: Mr. Chiarelli.

Mr. Bob Chiarelli: A technical amendment.

I move that subsection 37(24) of the bill be struck out and the following substituted:

“(24) Subsection 107(1) of the act is amended by adding the following paragraphs:

“1.1 An affiliate agent or employee of a gas marketer or retailer of electricity....

“4. A person exempted from the requirements of clause 57(a) by regulation.

“5. A person exempted from the requirements of clause 57(b) by regulation.

“6. A person exempted from the requirements of section 48 by regulation.

“7. An affiliate, agent or employee of a person referred to in paragraph 4.”

The Chair (Mr. David Oraziotti): Further comment?

All those in favour? Opposed? Carried.

Number 89: Mr. Kular.

Mr. Kuldip Kular: I move that subsection 37(25) of the bill be struck out.

The Chair (Mr. David Oraziotti): Any further comments?

Seeing none, all those in favour? Opposed? Carried.

Number 90: Mr. Kular.

Mr. Kuldip Kular: I move that subsection 112.0.1 of the Ontario Energy Board Act, 1998, as set out in subsection 37(29) of the bill, be amended by striking out “parts VII.1 and IX” and substituting “part IX”.

The Chair (Mr. David Oraziotti): Any further comment?

All those in favour? Opposed? Carried.

Number 91: Mr. Kular.

Mr. Kuldip Kular: I move that clauses 112.0.2(1)(a) and (b) of the Ontario Energy Board Act, 1998, as set out in subsection 37(29) of the bill, be struck out and the following substituted:

“(a) a person has contravened or is contravening an enforceable provision; and

“(b) there is,

“(i) in any building, dwelling, receptacle or place anything relating to the contravention of an enforceable provision, or

“(ii) information or evidence relating to the contravention of an enforceable provision that may be obtained through the use of an investigative technique or procedure or the doing of anything described in the warrant.”

1700

The Chair (Mr. David Oraziotti): Any further comments?

All in favour? Opposed? Carried.

Number 92: Mr. Mauro.

Mr. Bill Mauro: I move that subsection 112.0.3 of the Ontario Energy Board Act, 1998, as set out in subsection 37(29) of the bill, be amended by striking out “this act or the regulations” and substituting “an enforceable provision”.

The Chair (Mr. David Oraziotti): Any further comment?

All in favour? Carried.

Number 93: Mr. Mauro.

Mr. Bill Mauro: I move that part VII. 0.1, “Investigations and Investigators,” of the Ontario Energy Board Act, 1998, as set out in subsection 37(29) of the bill, be amended by adding the following section:

“Confidentiality

“112.0.6(1) All documents and records obtained by an investigator under this part or part IX are confidential and shall not be disclosed to any person other than a member of the board or an employee of the board except,

“(a) as may be required in connection with the administration of this act or any other act that gives powers or duties to the board or in any proceeding under this or any other act that gives powers or duties to the board;

“(b) to counsel for the board or an employee of the board; or

“(c) with the consent of the owner of the document or record or the person who provided the information.

“Same

“(2) If any document, record or information obtained by an investigator under this part or part IX is admitted in evidence in a proceeding under this act or any other act

that gives powers or duties to the board, the board may rule on whether the document, record or information is to be kept confidential.”

The Chair (Mr. David Oraziotti): Any further comments?

All those in favour? Opposed? It’s carried.

Number 94: Mr. Mauro.

Mr. Bill Mauro: I move that subsection 112.10(6) of the Ontario Energy Board Act, 1998, as set out in subsection 37(35) of the bill, be amended by striking out the portion before clause (a) and substituting the following:

“Exception

“(6) Subsection (1) does not apply if, prior to the board obtaining an order under that subsection, the person files with the board, in such manner and amount as the board determines,”

The Chair (Mr. David Oraziotti): Any further comment on number 94?

All those in favour? Opposed? Carried.

Number 95: Mr. Mauro.

Mr. Bill Mauro: I move that subsection 112.10(9) of the Ontario Energy Board Act, 1998, as set out in subsection 37(35) of the bill, be amended by striking out “the board” and substituting “the Superior Court of Justice”.

The Chair (Mr. David Oraziotti): Any further comment?

Seeing none, all those in favour?

Mr. John Yakabuski: Chair, whoa.

The Chair (Mr. David Oraziotti): Do you want to comment on that?

Mr. John Yakabuski: We’re going into the courts now. Is there a reason for that? Can they explain that to me?

We were told these were technical in nature—

The Chair (Mr. David Oraziotti): Striking out “the board” and substituting “the Superior Court of Justice.” Number 95.

Mr. Dave Levac: It corrects a drafting error, actually.

Mr. John Yakabuski: Oh. Now I understand.

Mr. Dave Levac: It now rightly provides that a person in respect of whom a freeze order has been made—

Interjections.

Mr. Dave Levac: I’m just going to make sure that I don’t get gang-tackled by all the lawyers in here, so I’ll make sure that I do this correctly here.

When you’re talking about this, it’s basically a correction.

Mr. John Yakabuski: Ah. Now I understand. I appreciate the clarification that Mr. Levac was able to give me. Mr. Mauro was able to cheer him on. Thank you.

Mr. Dave Levac: I was there backing him 100% because in writing this, he knows what he’s doing.

The Chair (Mr. David Oraziotti): Number 95: All those in favour? Opposed? The motion is carried.

Number 96.

Interjection.

Mr. Dave Levac: Yeah. Now that I’ve explained that even further, he’ll vote for the rest of these very quickly.

The Chair (Mr. David Oraziotti): Go ahead.

Mr. Dave Levac: Number 96, right?

The Chair (Mr. David Oraziotti): Right.

Mr. Dave Levac: This is technical in nature, Mr. Yakabuski, just so that we know.

I move that subsection 112.10(10) of the Ontario Energy Board Act, 1998, as set out in subsection 37(35) of the bill, be amended by striking out the portion before clause (a) and substituting the following:

“Disposition by court

“(10) The Superior Court of Justice shall dispose of the application after a hearing and may cancel the order or discharge the registration in whole or in part, if the court finds,”

Again, to amend a drafting error.

Mr. John Yakabuski: I’m comfortable with this now.

Mr. Dave Levac: I knew I’d make you that.

The Chair (Mr. David Oraziotti): Further comments on number 96?

All in favour? Opposed? The motion is carried.

Number 97: Mr. Levac.

Mr. Dave Levac: Technical in nature.

I move that subsection 112.10(11) of the Ontario Energy Board Act, 1998, as set out in subsection 37(35) of the bill, be struck out.

It’s not needed anymore.

The Chair (Mr. David Oraziotti): Any further comments?

All in favour? Opposed? The motion is carried.

Number 98: Mr. Levac.

Mr. Dave Levac: Technical in nature.

I move that subsection 112.10(12) of the Ontario Energy Board Act, 1998, as set out in subsection 37(35) of the bill, be struck out and the following substituted:

“Court application

“(12) If the court has made an order under subsection (1) or the board has registered a notice under subsection (8), the board may apply to the court for directions or an order relating to the disposition of assets, trust funds or land affected by the order or notice.”

Again, to correct a drafting error, to make sure that both the board and the Superior Court of Justice have the correct responsibilities covered.

The Chair (Mr. David Oraziotti): Any further comment?

All in favour? Opposed? Carried.

Number 99: Mr. Levac.

Mr. Dave Levac: Number 99: Gretzky. Sorry.

I move that subsection 112.11(1) of the Ontario Energy Board Act, 1998, as set out in subsection 37(35) of the bill, be struck out and the following substituted:

“Order for immediate compliance

“112.11(1) Without limiting the generality of section 112.3, the board may make an order requiring immediate compliance with an enforceable provision and, subject to subsection (2), such an order takes effect immediately.”

The Chair (Mr. David Oraziotti): Any further comment?

All those in favour? Opposed? The motion is carried.

Number 100: Mr. Levac.

Mr. Dave Levac: Technical in nature again.

I move that subsection 37(36) of the bill be struck out and the following substituted:

“(36) Section 122 of the act is repealed and the following substituted:

“Provincial offences officers

“122. Despite subsection 1(3) of the Provincial Offences Act, the board’s management committee may, for the purposes of that act, designate in writing any person or class of persons as a provincial offences officer, but the designation only applies in respect of offences under this act.”

This section is technical, but it does clarify the purpose and intent of the section when it was originally written.

The Chair (Mr. David Oraziotti): Any further comments?

All in favour? Opposed? Carried.

Number 101: Mr. Levac.

Mr. Dave Levac: Technical in nature.

I move that subsection 127(1) of the Ontario Energy Board Act, 1998, as amended by subsection 37(43) of the bill, be further amended by adding the following clause:

“(e.2.1) prescribing the meaning of ‘security’ for purposes of subsection 42(2.4);”

The Chair (Mr. David Oraziotti): Any further comments?

All in favour? Opposed? Carried.

Number 102.

Mr. Dave Levac: Technical in nature.

I move that clauses 127(1)(e.4) and (e.5) of the Ontario Energy Board Act, 1998, as set out in subsection 37(43) of the bill, be struck out.

The Chair (Mr. David Oraziotti): Any further comments?

All those in favour? Opposed? Carried.

Shall section 37, as amended, carry? Carried.

A new section. Mr. Tabuns: number 103. Go ahead.

Mr. Peter Tabuns: I move that the bill be amended by adding the following section:

“Residential Tenancies Act, 2006

“37.1 The Residential Tenancies Act, 2006 is amended by adding the following section:

“No discontinuance of service, etc.

“130.1 Nothing in section 130 authorizes a landlord to discontinue a service or facility without the consent of the tenant.”

I disagree with unit sub-metering. I think it provides substantial disincentive for landlords to invest in energy efficiency. I think it puts the weight of action for energy efficiency on the shoulders of tenants, for the most part people who are not in a position to make the investments that are necessary.

Frankly, when I look at the numbers—I asked legislative research to check the cost of operating the

meters: \$3 a month. The amortization of the cost of the meters at \$425 a pop, is somewhere in the range of \$4 to \$7 a month, depending on the financing you get. So, putting in a meter costs in the range of \$5 to \$8 a month. The savings in a unit that has an average bill in the range of \$38: If you’re paying out \$8 for operating that meter and amortizing its cost, right then and there, for an average unit that doesn’t have heating as part of its component, you’re 15% or so of the electricity bill. I don’t see that as a wise investment.

1710

If you look at the reality of the income levels of tenants and the relationship of their income levels to their rents, something like 58% of the tenants in this province pay 30% or more of their income in rent.

This is going to increase their rent. It will reduce the incentive of landlords to invest in their buildings, because, frankly, if they aren’t covering the cost of energy in the units anymore, they won’t get any return on making investments in energy efficiency in the building.

I’m moving this amendment to protect tenants from this change, which will not help them and will not help the environment.

The Chair (Mr. David Oraziotti): Any further comments?

Mr. Dave Levac: First, let’s be clear that I accept what Mr. Tabuns is saying in regard to his concern about tenant protection. But let’s also be clear that I don’t subscribe to the belief that tenants would not be able to make those decisions and have that option available to them.

The proposed bill that we’re talking about doesn’t address any sections of the RTA, particularly 130, which you’re referencing.

With regard to the removal of electricity as a service included in their rent, in sections 137 and 138 of the RTA, as drafted in the proposed bill that we now have, it is required that tenants must consent before electricity can be removed. Having that consent probably takes care of what it is that you’re concerned with, unless you’re assuming that all tenants must be protected from a choice between whether they want to go on the meter or not. I’m respecting your philosophy, Peter, that says it’s not going to do that, but you don’t provide them with that option.

Mr. Peter Tabuns: No, I say that “nothing ... authorizes a landlord to discontinue a service or facility without the consent of the tenant.” I’m very concerned that in fact landlords will find methods of changing the metering in units if tenants are not there. To that end, I’m moving this amendment.

The Chair (Mr. David Oraziotti): Any further debate, further comments?

Mr. Peter Tabuns: Recorded vote.

Ayes

Tabuns.

Nays

Chiarelli, Clark, Jaczek, Kular, Levac, Mauro, Yakabuski.

The Chair (Mr. David Orazietti): The motion is lost.

Section 38, NDP proposed amendment number 104: Go ahead, Mr. Tabuns.

Mr. Peter Tabuns: I move that subsection 38(1) of the bill be struck out and the following substituted:

“Residential Tenancies Act, 2006

“(1) Part VIII (sections 137 and 138) of the Residential Tenancies Act, 2006 is repealed.”

This is a section that deals with metering. I’ve made my arguments. I don’t think the numbers back the arguments of the landlords on this one.

The Chair (Mr. David Orazietti): Any further comments?

Mr. Dave Levac: We will state the position that we don’t accept this amendment—very similar to the rationale that we provided. I’m sure that we can enter into a discussion on the philosophy of whether or not it will or won’t work.

Removing the part of the RTA would not be consistent with the government’s commitment to facilitate suite metering in rental units and to provide protections for those tenants before suite meters can be implemented.

I would hope you would acknowledge that those protections are in there, save and except understanding your positioning that we shouldn’t be doing this. But if we are doing this, I think you would acknowledge that there are those protections that we’ve just agreed to in these amendments to this bill. I’m not going to convince you that this is going to be good enough, but I’m suggesting to you that I believe that we’re on the right path to ensure that if and when metering does take place, those protections will be there.

I think we’re just going to end up agreeing to disagree, however that ends up.

Mr. Peter Tabuns: We will disagree.

Recorded vote.

Ayes

Tabuns.

Nays

Chiarelli, Clark, Jaczek, Kular, Levac, Mauro, Yakabuski.

The Chair (Mr. David Orazietti): The motion is lost.

Section 38: Shall it carry, not as amended? Carried.

Sections 39 and 40: no amendments. Shall they carry? Opposed? Carried.

Shall the title of the bill carry? Carried.

Shall Bill 235, as amended, carry? All those in favour? Opposed? Carried.

Shall I report the bill, as amended, to the House?

Mr. Dave Levac: Before you do that, Mr. Chair—

The Chair (Mr. David Orazietti): Go ahead.

Mr. Dave Levac: Just a large thanks to staff and to the committee for the way in which we dealt with this, and to the stakeholders. I want to express my appreciation for the patience and the understanding that everyone applied while we were doing the hearings and when we were drafting the bill, to respect everyone’s opinion and comments that were made, and to reinforce my thanks to staff that are here. I know that there was an awful lot of work done behind closed doors and burning the midnight oil, so I want to show my appreciation to all of them for doing that.

The Chair (Mr. David Orazietti): Thank you. I think everyone would echo those comments, and I appreciate you making them.

We do have the last question on the floor. Shall I report the bill, as amended, to the House? All in favour? Agreed.

That’s it. Committee is concluded.

The committee adjourned at 1716.

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Mr. John Yakabuski (Renfrew–Nipissing–Pembroke PC)

Also taking part / Autres participants et participantes

Mr. Dan Shear, counsel, Ministry of Energy and Infrastructure

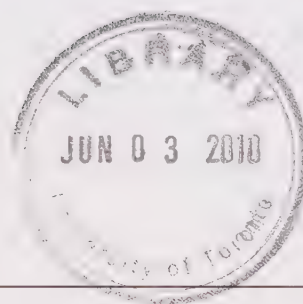
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Assemblée législative de l'Ontario

Deuxième session, 39^e législature

Official Report of Debates (Hansard)

Monday 17 May 2010

Journal des débats (Hansard)

Lundi 17 mai 2010

Standing Committee on General Government

Post-secondary Education
Statute Law
Amendment Act, 2010

Comité permanent des affaires gouvernementales

Loi de 2010 modifiant des lois
en ce qui concerne
l'enseignement postsecondaire

Chair: David Oraziotti
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENT

Monday 17 May 2010

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Lundi 17 mai 2010

The committee met at 1402 in room 228.

The Chair (Mr. David Orazietti): Good afternoon, everyone. Welcome to the Standing Committee on General Government and public hearings on Bill 43.

SUBCOMMITTEE REPORT

The Chair (Mr. David Orazietti): We have a report of the subcommittee. Mr. Levac.

Mr. Dave Levac: Mr. Chairman, this is the report from the subcommittee:

Your subcommittee met on Wednesday, May 12, 2010, to consider the method of proceeding on Bill 43, An Act to amend the Post-secondary Education Choice and Excellence Act, 2000, the Private Career Colleges Act, 2005 and the Ontario College of Art & Design Act, 2002, and recommends the following:

(1) That the committee meet in Toronto on Monday, May 17, 2010, and if necessary, Wednesday, May 19, 2010, for the purpose of holding public hearings.

(2) That the committee clerk, with the authorization of the Chair, post information regarding public hearings on the Ontario parliamentary channel, the Legislative Assembly website and the Canada NewsWire.

(3) That interested parties who wish to be considered to make an oral presentation contact the committee clerk by 12 noon on Friday, May 14, 2010.

(4) That groups and individuals be offered up to 10 minutes for their presentation.

(5) That groups and individuals be scheduled on a first-come, first-served basis.

(6) That the deadline for written submissions be 5 p.m. on Wednesday, May 19, 2010.

(7) That the research officer provide the committee with a summary of presentations.

(8) That, for administrative purposes, proposed amendments be filed with the committee clerk by 12 noon on Wednesday, May 26, 2010.

(9) That the committee meet for the purpose of clause-by-clause consideration of the bill on Monday, May 31, 2010.

(10) That the committee clerk, in consultation with the Chair, be authorized prior to the adoption of the report of the subcommittee to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

That is your subcommittee report.

The Chair (Mr. David Orazietti): Any comments?

Mr. Dave Levac: I move its adoption.

The Chair (Mr. David Orazietti): All in favour? Opposed? It's carried.

POST-SECONDARY EDUCATION
STATUTE LAW

AMENDMENT ACT, 2010

LOI DE 2010 MODIFIANT DES LOIS
EN CE QUI CONCERNE

L'ENSEIGNEMENT POSTSECONDAIRE

Consideration of Bill 43, An Act to amend the Post-secondary Education Choice and Excellence Act, 2000, the Private Career Colleges Act, 2005 and the Ontario College of Art & Design Act, 2002 / Projet de loi 43, Loi modifiant la Loi de 2000 favorisant le choix et l'excellence au niveau postsecondaire, la Loi de 2005 sur les collèges privés d'enseignement professionnel et la Loi de 2002 sur l'École d'art et de design de l'Ontario.

NORTHERN ONTARIO
WELDING COLLEGE INC.

The Chair (Mr. David Orazietti): We have a number of deputations this afternoon. The first group is the Northern Ontario Welding College. Please come forward.

Good afternoon. Welcome to the Standing Committee on General Government. As you know, you have 10 minutes for your presentation. Please state your name, to start, for the purposes of Hansard. Any time that you don't use in the 10 minutes will be allotted to members of the committee for questions. Go ahead.

Mr. Bill Mandris: Honourable ladies and gentlemen, we are the owners and operators of Northern Ontario Welding College in Barrie, and have been in operation and registered since 2001. We are part of the Association of Registered Private Welding Career Colleges located across Ontario. We've read Bill 43 and would like to register our concerns, mainly the lack of consultation and notice of the changes being proposed in Bill 43.

On April 21, 2010, we attended a conference hosted by the Ontario Association of Career Colleges at Blue Mountain resort. The Honourable Minister John Milloy attended the opening ceremonies and spoke in very general terms. Allan Scott, superintendent of private career colleges, did a ministry presentation. He referred

to the Ombudsman's report briefly and to the recommendations contained in it. He briefly touched on changes they were making within the ministry and the extra staff they were bringing in to do investigations. Laurie LeBlanc, assistant deputy minister, employment training division, reviewed her department and their future objectives and their past successes. She noted that the government was moving to a one-stop shop for clients. This conference would/could have been an opportunity for any one of the three to speak to the proposals/changes in Bill 43.

We were told that the PCC Act, 2005, was currently being looked at and that some of the sections were being tweaked. This led those of us attending to believe that no big changes were being made. "Tweaked" normally means very minor changes, not changes that could potentially put us out of business. If the MTCU had enforced the PCC Act, 2005, none of these changes would be required.

The private career colleges sector is facing a number of very big challenges that could possibly put a number of us out of business shortly. Bill 43 is only part of our concerns, but a big part. If Bill 43 puts the unscrupulous colleges out of business, the MTCU has our full support, as these colleges give all our colleges a bad reputation. In fact, a number of good PCCs have reported unregistered colleges to the MTCU. We want to be part of an excellent education system.

Over the past few years, welding private career colleges have noted that the community colleges in their areas have added facilities and equipment to offer welding courses similar to what we offer.

In reviewing the Legislature notes, an MPP said the following: "If somebody came and wanted to set up a private institution which would be in direct competition with a small public institution, a small program, and in essence knock out the small public program, you wouldn't have to go through the whole quality evaluation. It would simply be that the public program, the one which is publicly funded, publicly controlled, would be the one that would take precedence."

Would this work in reverse, where a community college came into our area and in direct competition with us? This interpretation leaves private career colleges open to abuse by the community colleges. In our own area, Barrie, the community college actually used our program, and I know this has happened in other areas as well.

1410

It is very difficult for us to compete with a training program that is heavily subsidized by the taxpayers, and that includes ourselves. I understand that approximately 80% of tuition at community colleges is subsidized; the remainder is the tuition paid by the student. Private career colleges do not seek grants etc., from the government. Everything we have in our facilities has been purchased with our own money, thereby actually saving taxpayers money. If a new process comes out or new equipment is required, we purchase it out of our own

funds and do not look to the government for a handout to purchase it.

If welding is a declining or slow-growing industry in Ontario, as claimed by the MTCU and the labour market, why has the Ontario government invested so much money in building and equipping these facilities in community colleges and offered welding programs? Why has the government subsidized training facilities in unions when in fact unions are normally closed shops?

Going back to Bill 43, I would like to refer to subsection 17(1), where the MTCU can revoke approval of an existing approved program across a sector. The PCC must then submit an application for the new vocational program. It should be pointed out that programs could take weeks to develop and put through the various approving bodies before they are even submitted to the MTCU for approval. This whole process can take up to a year and can be costly. In the meantime, the PCC is not authorized to offer the program. We would very quickly go broke.

On subsection 19(2): Many PCCs similar to ourselves are corporations, but we are very small in size and have only one site. A \$250,000 fine is not reasonable.

Section 10.2: Paying the fine immediately with no opportunity to rectify or discuss the violation first, no matter how small or minor, again is not fair.

Section 12.1—service of notices: These should only be delivered to the owner by registered mail or delivered in person to the owner by the MTCU.

In closing, private career colleges historically have had a niche in the education market for students who have experienced learning difficulties, lost confidence in their abilities or are seeking focused training to get back into the workforce as quickly as possible to support themselves and their families. Our students are generally older, have been out of school for a few years and, therefore, do not want to attend community college with the younger crowd. In some community colleges, there are 40 students to one instructor and they often share welding machines. PCCs offer personalized training and have a much lower student/instructor ratio. We offer continuous intake. All graduates leave with their welding credentials, making it much easier to get that first welding job. Our students have names and faces and are not just numbers, and we offer follow-up assistance to graduates.

One of our greatest rewards is seeing a student who has been constantly beaten down by life, teachers, parents and employers and feels worthless blossom into a confident student with shining eyes, as they have mastered the welding skills and know they are going to be working shortly due to the skills and credentials they now hold. We love receiving calls and visits from past graduates who are very excited about their welding careers and where they have taken them.

We would welcome a visit from any MPP wanting to tour and discuss a private welding career college—no appointment necessary. You can try some welding, if you so desire. I should note that this open invitation is

extended to all parents, students and teachers. You have received a handout containing our brochures and information on our program. We welcome inquiries.

Thank you for this opportunity to express our concerns. Bill Mandris and Gail McCallum, owners and operators of Northern Ontario Welding College Inc.

The Chair (Mr. David Oraziotti): Thank you very much for your presentation, sir. That's the time for your presentation, so we don't have time for questions, but thank you very much for coming in today.

Mr. Bill Mandris: Thank you for listening. I appreciate that.

ONTARIO ASSOCIATION OF CAREER COLLEGES

The Chair (Mr. David Oraziotti): Our next presentation is the Ontario Association of Career Colleges. Good afternoon and welcome to the committee. You have 10 minutes for your presentation; any time you leave will be allocated to members for questions. You can start by stating your name, and go ahead.

Mr. Frank Gerencser: Good afternoon. My name is Frank Gerencser. I'm the director of the Ontario Association of Career Colleges and CEO of triOS College.

Mr. Craig Donaldson: My name is Craig Donaldson. I'm also on the board of directors of the Ontario Association of Career Colleges, and I'm the director of finance with triOS College.

We represent the Ontario Association of Career Colleges. Private career colleges are an important part of Ontario's educational landscape and have been for 140 years. The OACC is a non-profit organization that was established in 1973 to provide a voice to private career colleges and to promote a healthy private career college sector. The OACC is a partner with the National Association of Career Colleges, which was established in 1896.

There are over 600 private career colleges in Ontario, which train approximately 45,000 students each year. The 250 OACC member colleges represent approximately two thirds of all students in private career colleges in Ontario. The OACC member colleges provide career training to approximately 30,000 students a year in a wide variety of disciplines.

We'd like to thank the Standing Committee on General Government for the opportunity to discuss Bill 43. We think that consultation with the Ontario Association of Career Colleges on behalf of the career college sector is essential to ensuring that legislation and policies are effective and represent the best interests of the students and the sector as a whole.

Despite ongoing regular communication and meetings with the Ministry of Training, Colleges and Universities, we were surprised by some aspects of Bill 43 that have the potential to negatively impact students and the sector. We would have liked to have had the opportunity to consult with the Ministry of Training, Colleges and Universities more closely during the planning stages of

Bill 43. We have voiced this concern to the ministry, which has committed to work with us on future amendments in advance. We look forward to continuing to work with MTCU more closely in the future.

OACC supports changes to the Private Career Colleges Act that protect students and strengthen the sector. Increased fines and increased service rules are very concerning. They must be applied correctly to strengthen our sector.

There are a few other areas of Bill 43 which I'd like to discuss today, specifically the proposed changes to section 53 and section 25 of the Private Career Colleges Act that may negatively impact students and have the potential to negatively impact good, quality colleges based on the current wording of the bill. Therefore, today we would like to suggest a few changes to Bill 43.

One of the most concerning aspects of Bill 43 is the proposed changes to section 53 of the Private Career Colleges Act. I'm going to just read a small section of the bill as it's worded now. Bill 43 suggests the following changes to section 53 of the Private Career Colleges Act: "A policy directive issued under subsection (1) may revoke an approval for a vocational program or a class of vocational programs...."

"The revocation of an approval is effective as of the date specified in the policy directive...."

"In the case of the revocation of an approval for a vocational program or class of vocational programs, the effective date of the revocation specified in the directive ... applies despite any prescribed period for approval...."

As currently worded, there's a real danger that a policy directive can be unilaterally applied without consultation or notice, such that students in affected programs can be denied the ability to complete their education in their chosen program. We recommend that wording be added to ensure that all policy directives include a reasonable amount of time before a program approval is revoked. We recommend that there be a minimum of six months before an approval is revoked for new student enrolments. In addition, we recommend a separate clause to ensure that policy directives allow for sufficient time for all students currently enrolled in an approved program to complete their program prior to the approval being revoked. It is not fair to students who enrolled in an approved program to not be allowed to finish their program due to a policy directive.

Similarly, along the same lines, the proposed changes to section 25 of the Private Career Colleges Act, as they currently read, mean that policy directives may negatively impact students and pose unreasonable restrictions on private career colleges if reasonable timelines are not included in policy directives. I'll read the proposed change to section 25. It says, "A college may grant a student the approved credential for successfully completing the program only if the program is completed during the period when the approval for the program is valid." As mentioned, we recommend that a specific clause be added to state that if a student was enrolled in an approved program before a policy directive change,

that student should be allowed to finish and graduate from their program.

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Also, currently, section 25 of the Private Career Colleges Act includes a paragraph that reads that a private career college shall refund all of the fees if a “college discontinues the vocational program before the student completes the program....” Therefore, it would put undue financial hardship on any private career college that was forced to refund tuition fees as a result of a program approval being revoked due to a policy directive. This has the potential to result in business closures and unnecessary costs to the training completion assurance fund. It is important to the strength of private career college businesses that they be allowed to complete the training of students in approved programs.

One final section that’s included in the amendment reads: “Where an approval is revoked as the result of a policy directive ... a private career college shall immediately submit an application for approval of the vocational program if it intends to continue providing the program.” We suggest that this section be amended to provide a more reasonable time frame for private career colleges to submit new program approvals.

There may be several steps required to meet the guidelines included in a policy directive, and it is important that private career colleges have adequate time to respond to these changes and prepare a high-quality curriculum for program submission.

Also, there have often been lengthy delays in processing program approvals currently within the ministry, and we also suggest that guidelines be established for the Ministry of Training, Colleges and Universities to respond to or process program approvals.

The Ontario Association of Career Colleges believes that it is essential that time guidelines for policy directives are included in the amendments to the Private Career Colleges Act to ensure that students are able to graduate from approved programs that they started, and to ensure that private career colleges are given a reasonable amount of time to respond to policy directives.

Mr. Frank Gerencser: To conclude, there’s a lot of concern among our members that the changes included in Bill 43 provide the superintendent with too much discretion to unilaterally make changes without any consultation ensuring adequate time guidelines to protect both students and private career colleges. The changes that we requested today would help to ensure that the superintendent’s use of the new policy directives strengthen the private career college sector by ensuring reasonable transition timelines.

In the past, the OACC was consulted on significant changes in regulations, which provided valuable feedback and an opportunity for both parties to come together. The OACC does not support Bill 43 as it is currently written, and we suggest that more time be given for consultation with the sector.

Thank you very much for your time. The OACC would be happy to work with the Standing Committee on General Government and the Ministry of Training,

Colleges and Universities to ensure that the changes that we have mentioned to Bill 43 protect students and protect the strength of the sector. Thank you.

The Chair (Mr. David Orazietti): Thank you very much for your presentation. We have about a minute, so we’ll go to the Conservative caucus. Go ahead, Mr. Wilson.

Mr. Jim Wilson: Thanks for your presentation on such short notice. That’s really my question. Why do you think the government’s ramming this through? We have budget bills that take six or eight months that are far more important than this, and this is going to be done in two weeks and one afternoon of hearings.

Mr. Frank Gerencser: We’re very surprised about how this has evolved. We work closely with the government. The superintendent comes to our monthly board meetings that are on—had given us a heads-up that there were some minor housekeeping changes that were coming through, down the road; he alerted us that some of them were adjustments to the rates of the fines and penalties. Those all seemed reasonable because they are affecting schools that are outside the sector or are illegal operators, but this, I think, is an overreaction to the Ombudsman’s reports that are here, and giving way too much power on something that has just barely been started.

The superintendent has vast, new powers right now and a huge new staffing to be able to go out and investigate schools quickly—48 hours turnaround in the case of an alert that there’s a potential school. I think they’re doing a good job. The issue is that with this level of power, if somebody chose to—there are no checks and balances in the system. They can arbitrarily say, “Private career colleges are not allowed to do welding any more—end of story, immediately.” And if all you did was welding, you’re out of business.

Furthermore, as we’ve stated, all the students who took your program, a legal program at the time, suddenly are now taking an illegal program and are being shut out and they can’t even get their diploma. It’s unfair to students; it’s unfair to the businesses that are following the rules.

Basically, I believe there are two sides to what we have here in the sector: There are registered schools who care, do a good job and have been doing it for dozens or hundreds of years, if there are 100-year-old schools here. And there are unscrupulous operators who sneak into the system here again. Use your powers and knock off the unscrupulous operators who aren’t following the rules. Those of us who are, work with us. We’d love to work with you.

The Chair (Mr. David Orazietti): I’m going to have to stop you there. We appreciate you coming in today. That’s the time for your presentation.

PRE-APPRENTICESHIP TRAINING INSTITUTE

The Chair (Mr. David Orazietti): The next presentation, Pre-Apprenticeship Training Institute. Good after-

noon and welcome to the Standing Committee on General Government. You have 10 minutes for your presentation. Start by stating your name, and you can go ahead.

Mr. Rui Cunha: Thank you very much. My name is Rui Cunha. I'm with the Pre-Apprenticeship Training Institute, and I'm a private career college in Toronto. Also, we have locations in Cambridge.

My primary reason for being here today is—actually, just following the OACC's presentation, they took pretty much all the thunder and all the communication that I was going to share with you. However, what I'll do is, I'll take an opportunity to talk a little bit about what we do and how this affects us directly. Perhaps I can even enlighten you with a little bit of an experience I've had, probably two years ago, that really highlights the danger of not having checks and balances in the system.

I checked with you a package about Pre-Apprenticeship Training Institute. I feel a little uncomfortable as one of my ex-teachers is here, so I hope I do a good job.

After having read Bill 43, I want to let the committee know that we support the bill; however, not the way it has been presented. Certainly we support the idea of granting credentials and making sure that the private career colleges really can do that in an effective way. However, we want to make sure that we can deliver these programs in a way that meets the needs and expectations of the folks who train with us. Certainly the power that has been provided to the superintendent under this bill really does provide us with some concern.

I would start off by talking a little bit about the results of our organization over the last five years, and maybe this will put some things in perspective. We train in electrical, plumbing, HVAC, structured cabling—all the areas of discipline that the Ministry of Training, under the apprenticeship programs, trains under. Really, I would say that they're probably our standard, if truth be known.

One of the things I want to share with you is that in the last four months we've actually put 100—well, we haven't. We've trained 100 people who have actually gone to work in the first four months of this year. And you know what? In 2009, 100% of our folks were going to work when they graduated. It was tremendous—I'm sorry, just short of 2009; in 2009, it slowed down a little bit. As we know, the recession had an impact, but a large number of our folks still went to work; 95% of the people we put to work with contractors are still working with those contractors, and we're very proud of that.

Just recently, a constituent of Mr. Marchese's riding actually just went to work. He graduated two weeks ago and he's now working for Nortown Plumbing. He mentions that because he told us he was from your riding.

The point of the matter is this. I'll share an occurrence that we experienced in 2008 and that will put some perspective on this. When we initially started as a private career college, we received approval to deliver training in a three-month portion in class and a three-month portion in a placement. That was invaluable. You have to

understand, it's very hands-on. What happened was, we received a visit from MTCU in which they indicated that they had actually superseded their authority by allowing us to create a program that provided placement. They came to understand, as we also did, that restricted trades are not an area of jurisdiction for the private career colleges.

The one thing I want to make really clear is that the folks we dealt with at the ministry were fabulous. You know what? They told us what happened, they explained how we could fix it, and we did. And you know what? At no time was I or my organization not allowed to continue to deliver the programs. We did submit for a change in program which then allowed us to be compliant. By the way, in the current terminology, if you were to ask MTCU at that time if I was compliant, the answer is no, I wasn't, and yet we did everything right. They had overstepped their boundary and authority, and at the same time—you know what? We just fixed it. No student was affected negatively and there was no need for reapplication of programs. Really, why would you want to do that?

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Anyway, that was my experience, so I have the utmost respect for and value the folks that I worked with a great deal because, I'll tell you, that was a difficult time for them and for us as well.

Now, as an organization, over the last five years of operation, or just short of that, we've probably put about 1,500 people into skilled trades. Let me put it to you in a different perspective: All of you have in some way been affected by PAT. If you have just had a phone line installed, if you bought a home, a condo—you know, my son said to me, "Dad, if you get nervous, my teacher always says to think about the folks in their undergarments." I'll resort to that later, I suspect.

The bottom line is this: We put 1,500 people to work because of the training we provided. It was valuable and it's valued by the folks who did it. Any plumbing you've had—I'm not saying it was always our graduates, but I'm hopeful. On the telecommunication side, we're very strong. We supply Bell with a lot of people—electricians, plumbers, HVAC etc.—so these are valuable skills.

I guess the only thing I have to share with the group here is that I can't support this bill the way it is. It truly negatively affects our students. We're not a large organization. Don't worry, we don't have to worry about \$250,000 in fines. You don't have to go that far to get me out of business. We don't have divisions; we are a pre-apprenticeship. For example, if you were to tell me tomorrow that apprenticeship is a standard, well, in our package, we've included TDA applications so we can have a standard similar to what you're looking for, an accreditation process. But that has taken two years and we still haven't heard back.

I don't think that these things have a quick turnaround in every industry. For that reason, I would really like the opportunity to share any thoughts or any questions you may have regarding this bill, because I don't think it

serves our students or our organizations that are compliant and have and want a positive reputation in this industry.

The Chair (Mr. David Oraziotti): Thank you very much for your presentation. We have some time for questions. Mr. Marchese, go ahead.

Mr. Rosario Marchese: Thank you, Rui. I've been to your program. It seems to me to work fine. My problem is that if you've got a private college that isn't doing things right, and to an extreme—because I read the two reports that were done by the Ombudsman, and it was very clear that the ministry, even when they're doing things illegally, was still keeping them open. They were trying to help them, in fact, to do it right two years later. Some of your colleagues are concerned that somehow the superintendent is just going to shut them down. Maybe there has been a shift in politics where they want to shut everybody down. I just don't see that, not based on experience. My sense is that if someone is doing things seriously wrong, they should be shut down, because I worry about the students. If they're doing things well, I don't believe that the ministry—I don't want to speak for the Liberals—and/or the superintendent is going to have an interest in shutting them down. What exactly is in this bill that would jeopardize your operation or shut you down?

Mr. Rui Cunha: The thing you have to understand is that if the ministry were to say, "Well, there's a credential issue. We want you to have this credential if you're delivering pre-apprenticeship," the credential might be a TDA status, which is training delivery agent status. It's a review that is done by the director of apprenticeships. When a program is reviewed by the director of apprenticeships, that program can become a TDA. But until then it can't, and the only time that ever gets done is if the apprenticeship side of the ministry actually recommends that. What I'm saying is that if the apprenticeship is the standard, we are happy to meet that standard; I think we already do, to be honest with you, but the problem is, if that accreditation were standard and a requirement, a process doesn't exist to allow that to happen.

Basically, Rosario, if I wanted to send my programs to the ministry and ask the director of apprenticeships to review them, the answer would be no. That's exactly what I'm saying.

The Chair (Mr. David Oraziotti): On that point, I'm going to have to stop you. That's time for your presentation. Thanks for coming in today.

TRILLIUM COLLEGE

The Chair (Mr. David Oraziotti): The next presentation: Trillium College.

Good afternoon. Welcome to the Standing Committee on General Government. You have 10 minutes for your presentation. If you state your name, you can start your presentation.

Mr. Marcello Scarlato: Before I begin my presentation, I just want to introduce myself. My name is

Marcello Scarlato. I'm a director with Trillium College, which has eight locations across Ontario. Trillium is a private career college registered with the Ministry of Training, Colleges and Universities in this province.

I have been in the career college sector for the past 18 years with three different schools, some very large and some smaller. My most recent employer, the International Academy of Design/Toronto Film School, at the corner of Bay and Wellesley, has been in the city for about 25 years. Unfortunately, the Canadian operation shut down a few years ago. We employed about a thousand people across three different cities—Toronto, Ottawa and Montreal—and we had close to 4,000 students. Our parent company in Chicago, publicly traded on the NASDAQ, employs over 10,000 people and continues operations today.

Other big schools that have left Ontario: The Art Institute shut their doors down this past year, and they employed 15,000 people across North America. DeVry at one time had 3,000 students across Ontario, and also left Ontario about 10 years ago. The University of Phoenix, the largest provider of career trainers around the world, has decided not to enter the Ontario market because of the increased regulations and the cost of compliance.

Today is the annual convention for the NACC in Banff, Alberta. Most of the career college owners are at the conference and are unable to attend this standing committee, which I feel is unfair. It's happening very quickly, and everybody is out of town for the week.

Five years ago, the Ontario association, including myself, reviewed the PCC act with the current superintendent at the time. She gave us two years to review the act before it was finalized and proclaimed. Unfortunately, now this is not the case.

Now I'm going to get into my presentation. I'll start with a summary, then I'll get into some details.

With this bill, the government is doing the following:

- waging war on and ultimately killing the sector;
- compromising the ability of immigrants and persons wishing to re-skill and seek dignity in their life to do just that;
- invoking antiquated protectionist measures in an otherwise borderless and global environment;
- being anti-competitive, which raises competition/antitrust issues for the Competition Bureau;
- encroaching on the federal power of trade and commerce, which is constitutionally entrenched under section 91 of the Constitution Act, 1867. The province regulates education matters, but when it overreaches, it encroaches into federal jurisdiction;
- expropriating from investors and stakeholders to whom it made promises that they now cannot keep;
- creating a "chilling" effect which will do anything but yield a net trade benefit in Ontario;
- giving subjective powers to people with no specific expertise in education or curriculum; and
- breaching its own legislation which demands that schools be financially responsible, thereby doing the very

thing it says it's protecting against: compromising students.

Now for my detailed presentation.

Problem number 1 with Bill 43: The bill creates uncertainty for stakeholders and in fact expropriates wealth from them, contrary to what the 2005 act was intended to do. The bill discourages a strong sector where schools could be financially responsible. Example: A section of the proposed legislation amends section 25 of the act by adding provisions that create a 'chilling' effect on anyone wanting to invest in a private career college, and expropriates value and wealth from investors who have already put money into private career colleges. How? Without any grandfathering at all, section 18 of the bill proposes to add two subsections to section 25 of the act. Subsection 25(2) will say that the program has to be completed during the period in which the program approval is valid, which begs the question, when is the program valid? Under the proposed bill, the superintendent has the ultimate power to decide when the program is valid, because subsection 25(3) says, "Despite subsection (1)"—and subsection (1) is the approval that the school and investors rely upon in their forecasting—"a policy directive may revoke an approval of a credential issued under this section." This gives the superintendent and the government the power to make arbitrary decisions with seemingly no parameters, but most importantly, to move the line and decide to revoke a credential at will.

Our recommendation to problem number 1: The statute does not say, for example, that the superintendent should only revoke an approval in the following circumstances, and then give examples, but it should. People are fearful that this provision will be used as a sword, not a shield, and that the powerful public sector or negative media—like the Ombudsman's reports—may force the government's hand to do something that is unjust.

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Problem number 2 with Bill 43: The costs of pursuing remedies are unjust and prohibitive, and the delay in getting the remedy will kill schools before they are heard. Whether it be injunctive relief, the LA Tribunal, or Divisional Court, schools will die on the vine while these matters are under appeal, and the government knows that.

Our recommendation: To protect students but also ensure that the sector can thrive and re-skill, the government should seek to give greater jurisdiction to the LA Tribunal and ensure that schools can get there quickly. An appeal by a registrant, except in the clearest of cases, should stay the decision of the superintendent until the matter is heard. This is a principle of procedural and administrative fairness that the government owes. The tribunal's specialized expertise in consumer protection will uniquely qualify them to hear many issues that currently must go to the Divisional Court or for which no remedy exists. They are every bit as qualified but more impartial than the superintendent, who decides on matters relating to curriculum.

Problem number 3 with Bill 43: The higher Provincial Offences Act penalties are acceptable and even desirable, but only if there is a known guideline that is used by the government to assess these penalties. Provincial offences penalties are increased from \$25,000 to \$50,000 for individuals and from \$100,000 to \$250,000 for companies. There is a perception that the current administrative monetary penalties, called AMPs, are being levied erratically and inconsistently by the superintendent and that many of these schools receiving AMPs are not the intended target of this consumer protection legislation.

Our recommendation 1 is to publish guidelines in a policy directive which would give schools guidance as to what would attract higher versus lower penalties. We can look at other statutes such as the Consumer Protection Act, but we would like to understand where the government is going with this.

Recommendation number 2: Compel the government to respond to these monetary appeals within a prescribed time frame. The government has unlimited time to consider an appeal—that is no time frame—while a registered school has its reputation compromised because it was AMPed.

Problem number 4 with Bill 43, the waiver of proper service: The government should not be able to effect service at the last known address even on the simplest of notices. Section 51 of the PCCA, 2005, currently requires verification that the delivery was made by the government with respect to "any notice, order, or other document that is required to be given, issued, delivered or served," under the act. The new bill creates a new clause, 51(1)(b), which allows the superintendent to serve a person at "the person's last known business or residential address as shown in the latest document filed with or correspondence sent to the superintendent using a method of mail delivery that permits the delivery to be verified."

Our recommendation: Don't allow the superintendent to serve a school with an important notice to an address which may have been given in error. Leave the statute as it is and require proper verification. It is always open to the government to have its counsel seek substitute service and seek its costs against the school for this if they are not responding to correspondence. While the superintendent cannot serve suspension notices this way, he can build a bona fide record of non-compliance against a school that leads to a suspension. This is unacceptable and denial of due process.

Problem number 5 with Bill 43, and the final one, a general comment about the systemic delay of the ministry: As it stands currently, it can take a compliant school months or even years to obtain program approvals, campus approvals and registration approvals with the ministry. The RICC system, which is the ministry's online database of career colleges, is archaic and needs to be more user-friendly. More importantly, the government must be committed to a specified turnaround time if it wishes to assert its jurisdiction over the 4,000 national occupational codes.

Our recommendation: The ministry needs to balance their control over the sector, especially for compliant schools. The ministry's full efforts need not be solely based on compliance and cleaning up the sector; instead, they should allow and assist career colleges to fulfill their mandate in society and provide educational options to students looking for career-oriented training so that they are prepared to get the career they deserve.

The legislation is the wrong solution for the ministry's lack of expertise in the adult career training market. Nobody will have a greater interest in hiring qualified experts than the sector itself. Thank you.

The Chair (Mr. David Oraziotti): Thank you very much for your presentation. We have a minute for questions. Mr. McMeekin, do you have any questions for the presenter?

Mr. Ted McMeekin: Mr. Scarlato, thank you very much for your presentation. I think you've got some interesting comments here that we'll certainly want to look at.

I just want to assure you, sir. You referenced consumer protection; that's very much what the Ministry of Training, Colleges and Universities is trying to do. We're not out to put out of business legitimate people who are offering a legitimate service, one that has stood the test of time. As a previous participant stated, he was technically not in compliance, but the ministry people found a way to work with him to fix it.

Mr. Marcello Scarlato: Correct.

Mr. Ted McMeekin: I want to just say that to you, and again, thank you for your presentation. We'll certainly take your comments under advisement.

Mr. Marcello Scarlato: Okay, very good. Thank you very much for taking them into account.

The Chair (Mr. David Oraziotti): Mr. Wilson, do you have a question?

Mr. Jim Wilson: Again, no consultation seems to be a theme here. In spite of the parliamentary assistant's assurances, I can tell you from 20 years' experience around here that most governments go ahead with the original legislation, as printed, and this government does not accept amendments very often—very, very rarely.

But while we have a minute, they're trying to weed out the bad apples—

Mr. Marcello Scarlato: Correct. I understand.

Mr. Jim Wilson: Have you got any advice for them rather than this legislative hammer that they seem to have produced?

Mr. Marcello Scarlato: Yes. At the end of the day I think they've really gone from the left extreme back in 2005, when the act was reviewed for the first time in 30 years, to the right. Their focus right now is closing down schools: You're guilty before proven innocent.

At the last conference of the association in Blue Mountain, I met numerous flight schools, hairstyling schools and other schools that were accused by the superintendent who later found out he was wrong, but it was just, "I'm sorry." But the businesses suffered drastically because there was a two- or three-month period

when they had no—so, at the end of the day, I think the measures are too extreme. He has crossed the line with his powers.

I think we need a rebalance back to the middle somewhere that is going to allow the good schools to survive. It's unfortunate that my old employer, the Academy of Design, right down the street here for 25 years, has left because the US parent didn't think it was worth their while. I understand that what the current superintendent is doing is good for the sector, but he needs to lighten up a bit.

As a final point, he needs to get business going, not just focus on compliance; get those program approvals going so we can make sure our programs are current with the market. In the old days, it used to take 30 days to get a program approved; it's now taking, at minimum, a year. A career college was mandated by the government many years ago to service a certain clientele: people who don't want to go to universities or community colleges. There are kids out there who need help, and if we can't get a program approved in one year, all the schools are going to close down, or the only schools that are going to survive are the big ones.

The Chair (Mr. David Oraziotti): I have to stop you there. Thanks very much for your presentation.

ONTARIO COLLEGE OF ART AND DESIGN

The Chair (Mr. David Oraziotti): The 2:40 presenter is not here yet but will be shortly, so we're going to jump ahead. The next presentation is the Ontario College of Art and Design.

Good afternoon, and welcome to the Standing Committee on General Government. You have, as you know, 10 minutes for your presentation. Start by stating your name for the purposes of our recording Hansard, and we'll begin when you're ready.

Mr. Robert Montgomery: Thank you, Chair and members of the committee. My name is Robert Montgomery. I'm chair of the board of governors at the Ontario College of Art and Design. I'm very pleased to address you to speak in favour of Bill 43 and the proposed amendments to the OCAD act.

As you know, OCAD is a great Ontario post-secondary institution. We'll celebrate our 135th anniversary in 2011. OCAD is the third-largest post-secondary art and design institution in North America, and many of Canada's greatest artists and designers are alumni and graduates, including members of the Group of Seven like Arthur Lismer and J.E.H. MacDonald, as well as your esteemed colleague, York Centre MPP Monte Kwinter.

Today, OCAD leads in the new sectors of the economy: digital media, sustainable development and green technologies. And we are very proud of our success rate in access; we have a diverse student population, many first-generation students and a flourishing aboriginal visual cultures program. OCAD is a place of imagination and creativity, brimming with design thinking which is

now recognized as one of the best methodologies to tackle big problems in business and society.

The amendments to the OCAD act currently in front of you will change our name to OCAD University, provide for a senate and formalize the establishment of the position of chancellor. OCAD has granted degrees since 2002, and these amendments will clarify our university status to all our stakeholders, including students, parents, donors, our business partners and collaborators.

Thank you very much for hearing me. I will now turn it over to OCAD's president, Dr. Sara Diamond.

Dr. Sara Diamond: It's a great pleasure to address you today. I want, first of all, to thank the government very much for introducing this legislation. It completes a process that was begun in 2002. By adding "University" to its name—Ontario College of Art and Design University—OCAD will truly be a clarion for Ontario, able to proclaim the quality of art and design education at the university level in this province, and it really builds a competitive advantage for Ontario.

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It will allow OCAD better attract and retain students who thrive in a specialized university environment. Students need to understand the kind of education they are going to receive at OCAD. The reality at OCAD is that it is a university-level education. It's studio-based and experience-based, and it also requires strict academic discipline at the university level.

We're very successful in attracting students. We want to make sure we continue to attract students who can succeed at OCAD. OCAD has built graduate education in the last two years, and our programs are thriving. We have significant enrolment. We need to change the name, in a sense, to cap that achievement.

It will very much strengthen OCAD's ability to recruit international students. This is where we do face confusion: when we're out in the international arena. OCAD University's brand will allow Ontario to gain strategic advantage in international markets. We plan to double our international student enrolment over the next five years. We've targeted countries that Ontario has prioritized, including India, China and Brazil. We'll be better positioned to attract the best and brightest students from around the world, who will form relationships with our talented faculty and students. Ontario is already home to international students; Ontario plans to, and needs to, strengthen that enrolment.

It will greatly expand Ontario's research capacity. OCAD has become a significant actor within the digital media and ICT research community, both in Ontario and at the national and international levels; we're very strong in green and clean technology research; we have an excellent role to play, that we are playing, within design and health care, the future industries that will help build the knowledge economy.

In order to be successful in research, one needs the best faculty, and by changing our name to OCAD University, we can guarantee that we can both attract and retain faculty who want to teach in a specialized univer-

sity environment, and strengthen our research relationships with other comprehensive universities in Ontario and beyond. The amendments to the OCAD act contained in Bill 43 will ensure that Ontario is a top competitor for student, faculty and research talent in Ontario, in Canada and in global markets.

A university's reputation and brand are built over many years. Coupled with our history of excellence, the OCAD University name change will create an extraordinary opportunity to launch OCAD's next phase of growth and development, and we urge you to support this.

I'm sure you have some questions for us.

The Chair (Mr. David Orazietti): Thank you very much for your presentation.

Mr. Marchese.

Mr. Rosario Marchese: I wish we had difficult questions for you, but we don't. You're in my riding. I think you're doing great work, and that the new title and new powers you have will make it more useful and more effective for you to provide the programs you want. We support it. It's an unusual way to introduce these amendments, but because we like you and we support you, that's okay.

Dr. Sara Diamond: Maybe I should mention that we have a fully functioning academic council, so transforming that council to a senate is not a challenge in any way. The name change really will come at a time when we've done all the preparatory work to be fully recognized by our peers as a university in Ontario and beyond.

The Chair (Mr. David Orazietti): Mr. McMeekin, do you have any questions?

Mr. Ted McMeekin: Madam President, extraordinary opportunities indeed. I've had a couple of daughters who have benefited from some of your programming there; we know it quite well. It's an incredible institution. This change is long overdue, as my good colleague and anyone who has followed the arts scene knows. Congratulations. Sorry it took so long, but we're going to get on with it and you're obviously pleased, so that's great news.

Mr. Monte Kwinter: Mr. Chair, I'm really here as a visitor; I'm not a member of this committee. If there is a vote, I will not be participating in it, but certainly I've had a long relationship, I'm sure many of you know. I'm a graduate, I used to be the vice-president, I was a valedictorian, I was president of the student council there, I was on the governing council and I have an honorary doctorate from there. So, obviously, this is an institution that is very close to my heart, and the reason is because they are the epitome of excellence when it comes to visual design training—and they've gone to a whole new level.

I have had some input into the building that is a real footprint around the world, and that's the Ontario College of Art's so-called flat-top building, which was designed by Will Alsop, who happened to be the best friend of Roy Ascott, who happened to be a former president.

There's no question in my mind: They are a university; they perform as a university. And it really was like sending them into the marketplace with one hand behind their back—because there was confusion: Are they a university, and if they are, why aren't they called one?

That's really what this is all about: just to add the name "university" to officially recognize what they already are. I would encourage all of the members to support it.

The Chair (Mr. David Oraziotti): Mr. Wilson.

Mr. Jim Wilson: Thank you for coming today. As I said in the Legislature on second reading, we're very supportive of this part of the act. We don't like the rest of the act.

I've been here 20 years. I've done six universities over those years. They've all had their own separate legislation—I think Mr. Marchese was referring to that—and it is, frankly, a dirty trick to put this good news in with the bad news.

So if my caucus doesn't support the bill, which currently we're not, please don't take it as a slight on OCAD. You've done an excellent job. This has become a political wedge issue, and I think it's dirty politics, frankly.

I do look forward to addressing Mr. Kwinter as chancellor in the future.

The Chair (Mr. David Oraziotti): That's time for your presentation. We appreciate you coming in today.

SECTA GLOBAL EDUCATION SOLUTIONS INC.

The Chair (Mr. David Oraziotti): Our next presentation: Secta Global Education Solutions, Paula Cooper.

Ms. Paula Cooper: Thank you so much for changing things around.

The Chair (Mr. David Oraziotti): No problem. Glad you could make it. Good afternoon. Welcome to the Standing Committee on General Government. As you know, you have 10 minutes for your presentation. Any time that you don't use will be divided among members for questions. Please state your name for the purposes of Hansard, and you can start when you're ready.

Ms. Paula Cooper: My name is Paula Cooper. I am the owner of Secta Global Education Solutions. It's a company that services private career colleges throughout Ontario. I'm proud to have approximately 100 schools in my company's portfolio. This solid representation of the sector gives me a very unique perspective into the issues and the day-to-day workings of PCCs as they relate to the ministry.

I'm speaking today to Bill 43 as it relates to the Private Career Colleges Act, 2005.

I understand that there were opposing views within our sector representation to what I will be presenting. With all due respect to those stakeholders and their positions, it is my strong belief that their views are only reflective of the larger schools with considerable finan-

cial power and overlook the small and medium-sized schools.

I have read the debates, and many erroneously have come to the conclusion that this bill is necessary to crack down on criminals intent on hurting students. This is emphatically wrong. Let me be extraordinarily clear here: This bill has been completely misunderstood. Bill 43 is not about protecting students against illegal operators. Bill 43 focuses on how the ministry can revoke approval of an already approved program and its associated credential and then force the school to reapply. The point that is being missed is that the reason for the revocation is not due to some issue of contravention but rather administrative triggers. The most concerning change is the addition that this requirement can also be triggered by some "to be determined" policy directive.

The act states that in order for a school to offer an approved program, it must be registered. Hence, it is clear that the ministry plans to apply this amendment to compliant, registered colleges, not anyone intent on fraudulent activity.

Much has been said about Bill 43 as being not very significant and that it does not do very much. Actually, this perception is far from accurate. Bill 43 increases the subjective power TCU already has. Under current legislation, TCU has the right of search and seizure without the requirement of a warrant. In fact, they have powers now that our own police do not. Due process is not part of the equation. I fail to see how in any context the ministry would seek to not only increase those powers but make them more subjective by giving the impression that they cannot enforce schools with the existing tools in place.

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There has been considerable reference in the debates to the Ombudsman's report on this sector. There were two reports: one for private and one for public. The common denominator in the both of those reports was systemic failures by the ministry. The common message I read is that TCU requires better internal organization, not increased power.

The Ombudsman took an extreme example, at a time when new law was trying to be implemented, which focused on an illegal operator who blatantly refused to come into compliance. There appeared to be considerable pressure on the ministry to respond to the Ombudsman's recommendations, resulting in a knee-jerk reaction on the part of the ministry that targeted registered private career colleges, not simply those that would intentionally seek to violate the act. I cannot speak to the Ombudsman's intent but I would hope this was not the outcome he sought. It appears that he wanted TCU to be more accountable to the legislation, not downshift its responsibility onto the shoulders of subordinate ministry staff and the sector itself.

Since the proclamation of the act, the ministry has undergone enormous change. There have been no less than four superintendents in four years, with a couple of interim acting superintendents; staff has significantly

increased; there have been three major reorganizations; staff turnover has been staggering; school portfolios have changed hands internally more times than I can count. But there has not been any formal training offered to TCU staff or the sector, except for one presentation in 2006.

The result of these changes is the following: Unbelievable powers of investigation, with little understanding of their meaning and consequence; very little training for inspectors and investigators; there exist no training manuals for ministry staff; there's no ongoing training for the sector; TCU investigative staff do not have a clear understanding of their roles, boundaries and/or legal consequences of their actions. There is a great deal of documented evidence to support this statement. For example, one TCU inspector has made the following statement in writing: "I anticipate in advance of any discussion with my colleagues that you will never see 100% consistency with program approval." I emphasize the point "never see 100% consistency." This raises the obvious question, then: How do you expect schools to follow the rules and be 100% compliant, then require them to accept the consequences of those policies when there is no transparent understanding?

While one time is one time too many, I've had more than one client and even non-clients express that they are afraid to challenge or ask questions of clarification regarding the legislation for fear of being investigated or issued a contravention notice due to their lack of understanding. In fact, given my representation of the sector, I too can admit feeling the same trepidation being in front of you today. However, my belief in my government's ability to accept constructive criticism, do the right thing and protect all of its citizens has allowed me to set aside my reservations and speak to you today.

PCCs are being unfairly penalized for a system that, frankly, is just not working, the result being that all PCCs are all being painted with the same brush of dishonesty, one which has even been reiterated in this House. Jeff Leal's comments in the debate clearly demonstrate the vilification of PCCs in Ontario. He states, "But many of them"—he's referring to new immigrants—"arrive here, and unfortunately, we have predators out there who want to take advantage of new Canadians coming in and, like the old snake oil salesmen, often try to sell them a bill of goods very quickly. That can be a very disheartening experience for newcomers...."

While it is true in any society, industry or sector that the dishonest will try and take advantage of the vulnerable, it is an extremely broad generalization that all PCCs prey on these unwilling victims to make a quick buck. Moreover, it is offensive to all business owners, not just PCCs. I am appalled that in Canada any politician elected to represent the best interests of his constituency and the greater society would correlate any person's right—my right—to operate a business, make a profit, earn a living and contribute to the GDP as predatory.

The crackdown on issuing reprisals has created another victim: registered private career colleges. They have

become easy targets to download huge punitive sanctions and financial penalties for administrative oversights simply because they are easy to find. The irony here is that the sector fully supports the ministry's efforts to bring down fraudulent individuals who steal from students.

For those individuals bent on setting up phony schools, the legislation has more than adequate power—actually, excessive power—to find these people and bring them to justice.

Liz Sandals states: "I make it clear that we're not denigrating all private career colleges, but that what we're trying to do is sort the wheat from the chaff, as it were." However, when you punish the masses for the failings of a few and put the responsibility of ministry shortcomings on the shoulders of businesses, that's exactly what you are doing: denigrating an entire sector. Would you punish an entire police department if someone impersonated a peace officer with intent to defraud the public? Of course not. But again, that's exactly what's happening in the PCC sector.

The combination of excessive control, little understanding of the sector, lack of set guidelines and accountability for ministry staff has led to what can only be deemed as rogue policy and investigation, and a state of fear within the sector, which is completely unacceptable.

As a Canadian citizen, there are two things I expect from my government. I expect it to both serve and protect its citizens. If government can cast an entire sector of businesses as criminals—as in Mr. Leal's statement—implement policies that assume guilt before innocence and deem those businesses not worthy of due process, then our government is failing us.

There has also been considerable reference to the Open Ontario plan. While there are no accurate statistics about the number of graduates PCCs produce since TCU suspended KPIs, the belief is there are anywhere between 30,000 and 60,000 annually. These are the masses of satisfied graduates who now have new or better-paying jobs and careers. These happy graduates essentially fuel the front-line skilled labour force. Not a single Ontarian can get through the day without being helped in some way by a PCC graduate.

Retraining, employment, strong businesses and GDP contribution are the foundations to ensuring that the Open Ontario plan is successful. I would think that government would want to support a sector that has a proven track record of over 100 years in achieving these goals.

To say that I'm disturbed and fearful about the lack of understanding about the real consequences of Bill 43—and even the act itself—would be a monumental understatement. A change in legislation would only serve to complicate an already out-of-control situation. I implore you to see the devastating impact that this will have on businesses, students, immigration, employment and the provincial economy. I urge you to understand the real underlying reasons for this bill's creation. I challenge you to keep Ontario open, not close it. I'm asking for your support in rejecting Bill 43.

Now I need some water.

Questions?

The Chair (Mr. David Orazietti): Thanks, Ms. Cooper, for your presentation. That's time for your presentation—that's 10 minutes, anyways, and then a little bit. So grab a glass of water; catch your breath. We're going to move on to our next presentation.

Ms. Paula Cooper: Okay, great. Thank you very much.

The Chair (Mr. David Orazietti): Thank you very much for coming today.

ACADEMY OF LEARNING, CORPORATE OFFICE

The Chair (Mr. David Orazietti): The next presentation is the Academy of Learning, corporate office, Mr. Giancarlo Ongaro. Thank you for being here this afternoon. Welcome to the Standing Committee on General Government. Please state your name for Hansard.

Mr. Giancarlo Ongaro: Thank you, Mr. Chair, and members of the standing committee. My name is Giancarlo Ongaro. I am the manager of product development and support for the Academy of Learning. We are a Canada-wide private career college organization. We span from province to province to the territories, and we offer vocational programs.

My presentation today is to delve into the process and how we go about producing and developing programs for our schools and ultimately our students.

The Academy of Learning's approach to developing programs is quite comprehensive. Our initial step is to get a clear understanding of the labour market today, tomorrow and in the near future. We achieve this by conducting a thorough labour market analysis from a national perspective, which the Academy of Learning commissions every two years. This report takes into account a variety of publications, from government labour market reports at federal, provincial, regional and city levels, to sector council publications like the Information and Communications Technology Council, the Conference Board of Canada and other private sector reports.

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Once completed, the report is reviewed and careers in demand are identified. We also take this opportunity to ensure that our existing programs meet the current needs of the labour market. The in-demand careers are then gauged as to whether they are required within the local labour markets where the Academy of Learning's colleges are present and operating, and whether the skill and knowledge outcomes can be achieved within a program at the college level. Our process also includes consultation from franchise owners and, by extension, local area employers. We validate these findings by conducting searches of local job postings within Academy of Learning college markets and also seek feedback and comments from industry and employers.

Once these in-demand careers are identified as potential programs and viable in the Academy of Learning labour markets, we then proceed with identifying the skills required to fill these jobs. In identifying these

skills, we use a variety of data. First and foremost, we use the National Occupational Classification tool, which is through the Human Resources and Skills Development Canada organization, which is the authoritative resource on occupational information in Canada. The NOC tool classifies occupations with a four-digit code according to skill type and skill level. The classification system also supports a variety of career information sources published by the government of Canada and others, which we use in our labour market research report.

Secondly, we also make use of the Essential Skills tool, again through HRSDC. This identifies the skills needed for work, learning and life which provide the foundation for learning all other skills, enabling people to evolve with their jobs and adapt to workplace change. We use job-specific postings obtained from various regional markets, as these assist the validation of the skills needed and identify any further employer-required skills. We also seek employer feedback as required. Based on our consultation process with franchise owners from the various regions, variants may be identified to satisfy region-specific skill requirements. This provides us the ability to modify slightly the program outlines so that these region-specific skills are met.

At this point, a program outline is designed whose courses have been identified and mapped to fulfill skills requirements identified in NOC and other contributing information, as mentioned prior. During the course development process, we continuously validate that the skills required are being met by referring back to the knowledge and skills for that particular job. Our programs are also assessed by an independent program design specialist, a third party, to ensure that the program delivers its intended outcomes. In addition, we consult with program advisory committees or employers to validate our programs: that they do meet the required vocational skills and knowledge.

To ensure quality in the delivery of our courses and programs amongst the colleges across Canada, Academy of Learning courses are standardized in terms of course content and method of delivery, thus ensuring the required quality level is met and vocational skill goals are achieved.

Private career programs are vocational in nature, and accordingly, our courses are vocationally focused. The difference is that private career college programs are developed with a NOC code and employer skills requirements in mind throughout the whole process, and the quality of our program is maintained. Vocational skills are constantly reviewed and thus continuously met.

In closing, it is my belief that the career colleges play a vital role in training adults for jobs. They are critical to helping Ontario meet its explosive demand for skills that public institutions cannot always meet.

The Chair (Mr. David Orazietti): Thank you very much for your presentation.

Mr. McMeekin?

Mr. Ted McMeekin: Giancarlo, I really appreciated your presentation, especially the overview of your acad-

emy. As I listened to you speak, I couldn't help but think I'd love to get a copy of your report that is predicated on all the available sources about job trends, and how you do that. That would be useful to me personally and I suspect useful, perhaps in many other ways, to the Minister of Training, Colleges and Universities, so I appreciate that.

I didn't hear you say much about Bill 43.

Mr. Giancarlo Ongaro: Again, I'll leave it to my colleagues who will also be represented by—

Mr. Ted McMeekin: Okay. But let me ask this question.

Mr. Giancarlo Ongaro: Sure.

Mr. Ted McMeekin: Is the material that you produce, which clearly—I'm a social scientist; that's my background. What gets measured gets done. You obviously are spending a fair bit of time and investment in terms of trying to ascertain that. Is that something that you currently share with the ministry or would be willing to share with the ministry?

Mr. Giancarlo Ongaro: It is public in terms of reports. We do pull from futures Ontario, and the futures province documentation. We then make an assessment based on the trends out there and we identify programs that we feel our organization would best be suited in delivering.

Mr. Ted McMeekin: Your process, and I say this with a great deal of humility and respect, seems to be quite comprehensive.

Mr. Giancarlo Ongaro: It is.

Mr. Ted McMeekin: Again, with respect, more comprehensive than many other similar processes that I'm familiar with. It might be helpful to a ministry that strives on a good day—and most days are good days—to understand what the stakeholder group out there is thinking and feeling to have access to the kind of quality information that you clearly could provide. So I just offer that up as a suggestion and want to say how much I appreciate the overview. I'm confident that you're doing some good things. Thank you.

Mr. Giancarlo Ongaro: Thank you very much.

The Chair (Mr. David Oraziotti): Mr. Clark?

Mr. Steve Clark: Thank you very much for your presentation. I look forward to some of the owner/operators of a couple of eastern Ontario locations in a few moments to speak about their experiences.

I've spoken to a number of private colleges, and we've heard from a number as well today, about the feeling of bias within MTCU against the career colleges. You have a number of facilities in Ontario and I'd be interested to hear your view on that, whether you feel that there is a bias in the ministry against private career colleges.

Mr. Giancarlo Ongaro: "Bias" is a strong word. That being said, I think there is a lot of confusion by PCC owners in understanding what to expect on Monday and then what to expect on Tuesday. There are a lot of inconsistencies. Paula identified some, for us, frustrating aspects, and those are program approvals and registration.

We can call our program adviser, or whatever they're called today, and our request to find out what kind of time frame it would take to have a program approved or reviewed is an abyss. I don't know—it might be three months; it might be six months.

We've had programs in the hopper that have taken well over a year to get approved. If there is a market need for these programs, that's 12 months, 16 months already past its due date type of thing. We need to act quickly, and we take the necessary steps of creating and looking at the data that is available to us. This is public data; we're not picking it out of the air. This is all relevant data that is supported by various provincial governments, in Ontario specifically. We will look at the various data and identify those programs and say, "You know what? This is something for us to look into and to further explore," which we do. And we don't do it unilaterally. We look for consultation from our partners, our franchise owners, as well as employers and industry.

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The Chair (Mr. David Oraziotti): Thank you very much. I'm going to have to stop you there. We're over time. We appreciate you coming in today for your presentation.

Mr. Giancarlo Ongaro: Thank you for the opportunity.

ACADEMY OF LEARNING, KINGSTON CAMPUS

The Chair (Mr. David Oraziotti): Our next presentation is from the Academy of Learning. Good afternoon, and welcome to the Standing Committee on General Government. As you know, you have 10 minutes for your presentation, so you can start when you're ready and state your name for Hansard.

Mr. Michael Teglas: Good afternoon. My name is Michael Teglas. I'm the owner, operator and director of the Kingston, Ontario, campus of the Academy of Learning.

I want to start with a little housekeeping first. I will be speaking to the PCC Act, 2005, component of Bill 43 only. I will be using two acronyms throughout my presentation. The first is TCU, which is a reference to the Ministry of Training, Colleges and Universities of Ontario. The second is PCC, which refers to a private career college which is registered and has their programs approved through TCU. It also means that they have passed an annual inspection and provided statistical and financial data requested by TCU, some of which is audited. This is just to name a very few of the many criteria that qualifies them to be called a PCC.

I've sort of followed the Ombudsman approach and I've titled my presentation today: It's called Nothing but Negative. I would like to start by saying that I have attended a public university in the province of Ontario. I am a graduate of a community college in the province of Ontario. I have run a private career college for the past 20 years in the province of Ontario. I have two children

currently enrolled in two separate universities in the province of Ontario. I feel that this gives me a uniquely special place in this room. I don't think there are very many other people who can say that they've actually had hands-on experience with all three formal, recognized paths of education this great province has to offer.

I want to draw your attention to this wonderful poster that the ministry sent out to us. I take great offence to the statement, "Protect Yourself."

Sorry. I get very passionate about this.

My college was established in 1990 and for the past 20 years, we have worked each and every day to help our students in every way that we can to improve their lives. Since opening our doors, there has never been a complaint lodged with TCU from a student attending our campus. Students do not need protection from my college.

This is not just a statement but a full warning. Even the design used, with black on yellow, screams "approach with caution." Unfortunately, this design disseminates a negative image of PCCs among the public. The message itself of "make sure your program is government-approved" in small print down here at the bottom is welcome; however, the execution of getting this important determination to the public is less than desirable and borderline defamatory. When we approached the ministry to suggest that the word "protect" be changed to "inform" or "educate", as it would be more representative of the industry, we were met with an emphatic "No."

To add insult to injury, TCU is using the social media site Facebook to publicize this message. However, when you visit this site you land on a page containing a list of negative orders/penalties brought against, primarily, illegal trainers that aren't even registered as PCCs with TCU. Why not direct prospective students to the existing TCU site that actually lists all registered PCCs and their approved programs, which is what this message is suggesting they should do in the first place? Nothing but negative.

There's so much that needs bringing into proper perspective surrounding post-secondary education in Ontario and unfortunately I don't have time to touch on them all. To start, a lack of understanding of the important role PCCs play in post-secondary education is constantly overshadowed by the negativity that has been cast by the uninformed, one-sided stories that hit the media on what seems to be a regular basis lately. What is most interesting in this regard is that the majority of the negative press does not even involve a PCC, but rather illegal operators masquerading as such. It is vital to understand the difference I speak of. It is fundamentally important that the two are clearly understood as not being the same. This misunderstanding has been quite evident during the debate on Bill 43 in the House, and the best example that everyone is most familiar with is Bestech, which became famous in the Ombudsman's report bearing the title *Too Cool for School*. This unscrupulous operator was never a PCC.

The Ombudsman also made reference to the fact that they found TCU's handling of Bestech Academy to be "abjectly inept"—very strong wording. I would like to provide some background that may better help understand why these strong words may be the appropriate ones.

Over the past five years, as Paula Cooper had mentioned—my numbers might be a little different—PCCs have been subjected to numerous TCU restructurings. We have had to deal with four different superintendents, and my college has been subjected to five different program consultants, now better known as inspectors and investigators. This ministry has such an enormous scope of responsibility, and very important responsibility at that, and with such a turnover of staff I ask, how do they expect to avoid systemic issues of ineptness?

PCCs have been suffering from this for some time, from not shutting down illegal operators to ridiculously long program approval delays, knee-jerk punitive reactions to student complaints, policies being made up on the fly etc. I would like to suggest that it is this lack of proper functioning within TCU that has contributed to the negative image being cast upon legitimate registered PCCs.

It also speaks to the near impossible frustration of gaining and sustaining complete compliance under the PCC Act, 2005, which Paula spoke to. With policies continually changing, it makes compliance prohibitively expensive and administratively elusive at best, and forces PCCs to operate in an environment of constant concern that should they stumble, the heavy-handed approach will be bestowed upon them. Nobody is perfect. We are only human and we all make mistakes.

It is also important to understand how registered private colleges are treated differently from public colleges. In a second Ombudsman report, *Too Cool for School Too*, the Ombudsman stated that TCU, out of respect for the independence of public colleges, abdicates any responsibility for ensuring that they, the public colleges, deliver the programs they promise. To illustrate this insane disconnect between public and private college treatment in this regard, I will speak to two coinciding events that are currently under way as I speak.

Recent complaints from three students attending the Niagara-on-the-Lake Culinary School, a PCC, led to an immediate suspension that has caused undue hardship to the owners. At the same time, there's a group of students attending George Brown College in Toronto, and when they complained that they did not get what the college promised, nobody listened. Unfortunately, the only resolve these students had was to muster up the fortitude to go before a judge and register a class action lawsuit against the college.

PCCs should not have to live with the possibility of their livelihood being destroyed because of a student complaint, nor should students have to register a class action suit to be heard by the public college system.

Bill 43 is going to do nothing to improve the way TCU handles these situations. These are systemic issues that need to be dealt with properly. Bill 43 needs to be

stopped, and the PCC Act, 2005, needs to be reviewed and revised. I agree with Mr. Wilson and I find it deplorable that the minister has chosen to hide this in amongst really good news about the Ontario College of Art and Design becoming a university.

It's very hard for an industry that has been told time and time again by ministers and superintendents alike that they play such an important role in post-secondary education to be constantly subjected to the negativity that TCU is dishing out. There needs to be more clearly identified rules that differentiate between those that are operating outside the law and those that are working hard to be compliant with the act. If you take away the competition, you take away choice for the 35,000 to 40,000 Ontarians who graduate from PCCs every year. Education happens at many levels, and PCCs help the working people of Ontario acquire the skills they need to be contributors to society and to build a strong, economically diverse workforce. Private career colleges have been around for decades. We do not deserve to be blamed for the inept handling of problems that the Ombudsman has made reference to.

Let me read to you an excerpt from a meeting that took place back in June 2008 when the community colleges in Ontario had a three-day strategic meeting, and from that published a document referred to as Profile of Non-Direct Entrants to Ontario's Colleges, 2008. In this document, the public colleges of Ontario professed to the following: "Systemic constraints inhibit the ability to react to market demands and deliver responsive programming.

"Non-direct entrants (those not coming directly from high school) often need more flexible options to meet their family and work responsibilities. Constraints created by the funding formula and established practices related to the collective agreement make it very difficult for" public "colleges to provide flexible delivery and student services that combine daytime and nighttime/weekend options to meet the needs of many non-direct students. Faster completion options are also difficult to deliver. Private colleges are much more responsive in offering fast completion and flexible timetables."

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Even the public colleges profess to the private sector's ability to provide a discernibly different product and service, so why all the negativity? I see it as some kind of necessary deflection to distract from the real issues.

In closing, I want to say that this is just the tip of the iceberg, and Bill 43 is not even close to an answer. If you want to improve post-secondary education in the province, then you need to work more closely with those stakeholders who live and breathe it every day, even if they are privately operated. If you take the time to understand the vocational training we bring to our local labour markets, you will begin to better understand how we fuel Ontario's economic engine by getting the unemployed mature worker back into workforce quickly and with higher skills. Our sector has provided this for the people of Ontario for over 100 years.

The PCC act deals with two distinctly different groups: registered PCCs, which for the most part are compliant with the act, and illegal private trainers who may or may not know they must be registered. The existing suspension powers are suitable for illegal private trainers who have to register before they can continue—

The Chair (Mr. David Oraziatti): Sorry, I'm going to have to ask you to wrap up.

Mr. Michael Teglas: —but are unreasonably punitive to apply to registered PCCs because of a student complaint: two different sectors, two different enforcement strategies. Please open the PCC act so we can fix this for the betterment of post-secondary education in this great province. Thank you for your time.

The Chair (Mr. David Oraziatti): Thanks for coming in. That's the time for your presentation.

ASSOCIATION OF PRIVATE COLLEGES

The Chair (Mr. David Oraziatti): Our next presentation is the Association of Private Colleges. Good afternoon, and welcome to the Standing Committee on General Government. As you know, you have 10 minutes for your presentation. State your name and start when you're ready.

Mr. Michael Nurse: Good afternoon. My name is Michael Nurse. I'm the executive director of the Association of Private Colleges.

It was the Association of Private Colleges that pushed the button that sent the email that brought these good folks today. I knew that if I could get enough passionate individuals in the room, perhaps we could dissuade the government from passing this bill. Unfortunately, we had a very limited amount of time, and it's remarkable that these individuals could take time away from their day to come here.

Realize that what you're dealing with here are not entrepreneurs and not owner/operators; you're dealing with educators. Every one of the individuals who spoke today is a committed individual. As Paula Cooper said, and it's my contention as well, you can't get through your day without it being facilitated in some way by a private career college grad.

We're the Association of Private Colleges. We were founded in 2007. We're an advocacy group for private career colleges. All we do is advocacy for private career colleges. Examples of that would have been illuminating to the Ministry of Training, Colleges and Universities: "inform" versus "protect." We simply wanted to have the word "inform" inserted. The message I brought from our schools is that they were overly insulted by that particular use of phrase.

I took over the position six months ago. I was an admissions director at a private career college and sort of loosely aware of the challenges that are affecting PCCs. My first 30 days were head-spinning in terms of the number and scope of challenges that are being faced by private career colleges, whether it was their tuition completion assurance fund bills, which in some cases had

gone up sixfold; or Second Career funding limits that were clearly punitive to the private career college sector. A quick example is massage therapy, taught in 33 PCCs in the province. Not one of them offers a program at less than \$15,000, and the limit was set at \$10,000. All those programs were therefore Second Career ineligible, or they had to discount their programs.

Lack of MTCU support: When I met with the new superintendent—he identified himself as a regulator—I expressed that the sector had concern about the powers of the superintendent. His simple response was, “Well, if they’re compliant and they have nothing to worry about, there’s no reason for them to be nervous.” But in fact, you can see that I have a number of nervous colleagues today.

Long waits for approvals: The record I have heard is 13 months. But if I canvass the room again, the waiting time for new program approvals is clearly out of control and needs some attention.

Negative media attention: We’ve all been tarred with the same brush. We brought to you today some private career colleges. The other group, the folks we want and are helping to get, is the illegal private trainers. AOPC has reported illegal private trainers. We applaud the MTCU approach to illegal private trainers. If there’s a way we can give them more powers to go after that group, then I’ll fill the room with individuals in support of that. But we don’t need to give the superintendent any more powers for private career colleges. We register each year, we’re inspected, and they know our name and address. They don’t need any significant powers to come to us.

We need to draw a clear line between the private career colleges and the illegal private trainers. The phrase “illegal private trainers” is currently not in the PCC act, that I’m aware of, but we need to open the legislation and insert language like that so the private career colleges can be protected, not threatened, not made nervous by this.

The Association of Private Colleges was notified the night before these amendments were introduced in the legislation. I received a call on my cellphone at 6 o’clock from a policy individual inside Minister Milloy’s office and was told there would be four amendments to the PCC act, that they would all be small and that in some cases only a few words were going to be changed. I was offered a briefing for our organization but then told, “Probably not necessary because this is such a small thing.”

Thirty six hours later, we were in this room hosting the first annual association of private career colleges PCC day and were given copies of the act by Mr. Wilson. I was fortunate to have individuals from my board here, specifically Paula Cooper, who could dissect this, look at it from the place of implementation and see that there are significant challenges here. While we feel frustrated that Bill 43 has lots of good in it, what we are specifically encouraging you to do today is remove sections 16 through 21 as they relate to the PCC act.

Let’s take a step back, consult with the sector—we’re more than willing to consult—and then insert some new amendments into the PCC act that allow it to work for the two distinct groups: the private career colleges and the illegal private trainers.

The Chair (Mr. David Oraziotti): Thank you. Mr. Marchese, do you have any questions for our presenter?

Mr. Rosario Marchese: Thank you, Michael. I have to admit that Paula, Michael Teglas and you have made some very persuasive arguments that I hadn’t considered.

Some of the points Paula made are very instructive. I have been very critical of the government in that regard, because we’ve had many, many turnovers. She identified that, and I think it’s a good point. Not only have we had, as she said, four superintendents in four years, including other comments such as staggering turnover of staff and abysmal training, which I suspect is true; but in addition, and she didn’t mention this, we’ve had a number of deputy ministers that have turned over in the last five or six years, which has made it even more difficult. Not only that, but ministers have gone through that portfolio on a regular basis, which only compounds the administrative problems in that office.

I have to admit that I found those arguments powerful in terms of the kinds of problems the ministry has been facing, and that’s why the Ombudsman could go to such an illegal operator that wasn’t registered and make a big case out of it, creating the impression as it did in my mind and in the minds of others that the industry is rife with those particular problems. I appreciate the fact that many of you have been tarred; I do. I also appreciate—

Mr. Michael Nurse: Sorry to interrupt, but also understand that we’re contributing to the search for those illegal private trainers. We’ve partnered with MTC. We’ve reported illegal trainers.

Mr. Rosario Marchese: You mentioned that, and I appreciate that as well.

Mr. Michael Nurse: We know where they are.

Mr. Rosario Marchese: And it’s a fair comment in terms of how you distinguish between the private career colleges and illegal trainers, and how you deal with one versus how the other one seems to be subsumed in the same category.

Mr. Michael Nurse: Exactly.

Mr. Rosario Marchese: So you make some good points, including section 21, where it talks about, “A policy directive ... may revoke an approval,” and in my mind I think, “Well, we’re talking about illegal trainers, but it may not necessarily be. So, what are those policy directives that could trigger such a revocation?” I don’t really know what they are, and you don’t either, I imagine. Is that correct?

Mr. Michael Nurse: No, but I could leave the room, go out and find out what they are; I can guarantee you that.

Mr. Rosario Marchese: It would be useful to hear what those policy directives could be that could trigger such a revocation, because that might help in terms of how I deal with that. I just wanted to make those points.

Thank you, and I think we can consider some of the amendments I am hoping the government will bring to bear on the basis of what many of you have said.

1540

The Chair (Mr. David Orazietti): Thanks. Mr. McMeekin, very briefly if you have something.

Mr. Ted McMeekin: Well, very briefly, the best political advice I ever got was from the late, great Sterling Hunt, who said, "Tell them what's broke and how you're going to fix it." I don't think that there's any dispute that there may well be some things that are broke that need fixing. I think the trick is: How do we move forward with this?

We have had conversations, pre-presentation, on this bill—perhaps not with as many people as, in hindsight, we might have, although your group was one—and we're absolutely committed to ongoing consultation at the regulatory process. I just want to provide you with that assurance. Be assured, sir, that we want to hear from you as we move forward, hopefully together—everyone prefers to arrive together rather than to be driven anywhere—and will be counting heavily on your expertise and advice.

Mr. Michael Nurse: Thank you.

The Chair (Mr. David Orazietti): Thanks. That's time for the presentation. We appreciate you coming in today. Thank you for your presentation.

CANADIAN WELDING SKILLS

The Chair (Mr. David Orazietti): The next presentation is Canadian Welding Skills. Good afternoon. Welcome to the Standing Committee on General Government. We appreciate you being here today. You have 10 minutes for your presentation, as you know. You can state your name and start when you're ready.

Mr. Jonathan Bennett: Thank you, sir. My name is Jonathan Bennett. Chair, committee members, thank you for this opportunity so that I may be able to speak to you today regarding Bill 43.

We own and operating Canadian Welding Skills, a PCC in Ennismore, just outside of Peterborough. I'm here with Ms. Olga Palatics, my partner, as well as Mr. Bill Mandris and Ms. Gail McCallum from Barrie, who are seated behind me. We're here representing the Association of Registered Private Welding Career Colleges of Ontario.

Due to the halt of EI-fundable trainees through our PCCs, half or possibly more of our group of seven welding private schools expect to be forced to close in a few weeks. Due to the strict rules imposed on us, numerous if not all PCCs may be facing closure or hard times. Ironically, we will be out of work, like the countless now-employed EI recipients were before they met us. EI-funded trainees used to research three training facilities and were allowed to choose. They are now being told to go to a community college. Where is the fair choice?

Recently, a mature trainee asked the MTCU in Peterborough for permission to attend my school because of

our good reputation. The rep said, "You need to go to the college; just don't attend the classes you don't like."

In February, I complained about two illegal welding schools under my nose. Good news—really good news: The MTCU shut down the one in Pickering in two weeks. Thank you for the good work. This is proof that Bill 43, in that regard, is unnecessary. I asked a MTCU employee, "What about the other one?" "On a reserve," he said; "We don't go there. That's not our department." That school still runs within commuting distance of my fee-paying PCC. Therefore, I hereby declare that 50% of the time a PCC such as mine, working with the MTCU, can shut down a crooked school. I feel we don't need Bill 43. I just gave you proof.

In 1971-72, I attending the welding specialist course at George Brown College here in Toronto. I didn't learn a thing in 10 months that was greater than my high school welding class. At the end of the first week at my first job, I was almost fired, but my lead hand asked his boss to keep me on. I heard him say, "He doesn't know anything, but he's trying really hard."

The following is a list of some of the events that my PCC has had to endure over the years with the MTCU. In the very beginning, I applied for a letter of exemption, which was refused. My MPP at the time met with someone in Ottawa. I got my letter two weeks later. Thank you, Mr. Gary Stewart, Peterborough.

Shortly after, an MTCU inspector then left a message on my answering machine demanding that we shut down. We were operating illegally. I guess she didn't check the files for my letter of exemption. She said she tried to find our school, as she was in the area, but wasn't able to locate the building, so she called and left a stern message telling me to close. The address was posted at the end of the driveway.

Later on, we submitted our application for a licence. The MTCU lost our file for 30 days. I called to inquire about the status as we had been cut off of EI-funded trainees because the rules had changed again without letting us know. The MTCU knew nothing of our application even though we had negotiated tirelessly with them by phone as we filled out the forms. I had to resort to a screaming match with them to get the job done. We got a phone call the very next day to tell me to check their website: Our school was now listed and registered.

Last summer, we moved to a new shop that cost me \$250,000. I wish I hadn't done it. Just after moving in, the funding system collapsed. I'm now running six to eight trainees per day, half of our capacity, which isn't paying the bills.

During the hectic move, we forgot to notify the MTCU of our change of address. Immediately, we went to their website and made the correction. We learned that we had 30 days to notify them. We phoned our inspector to apologize for our serious error and I asked, "Are we in a position of non-compliance?" He said, "No." He then called us 20 minutes later and threatened us with, "You are in non-compliance." I asked, "Where should I learn about the 30 days' notice required?" He implied that I

must know this, but he couldn't really tell me where to look other than maybe on the e-laws website. We looked there to learn that you only have a 10 days' grace period to notify of an address change. I emailed a supervisor and asked, "If the law says 10 days, why did your staffer say 30?" She emailed back, "Thanks for pointing that out. I will notify the superintendent." She didn't even know if it's 10 or 30 days.

We were told to mail a cheque for \$338 for a site inspection fee. I politely said, "Why should I do that? I paid you years ago for a site inspection. Nobody showed up." I was told I must pay. I refused—sorry. They said not to pay the fee. No site inspection as of yet.

I asked our local MTCU rep, "Do you monitor the colleges for accuracy in their advertising?" He said, no, that they didn't care. Why should they?

I had applied to a college welding program using an alias advertised to start in May. I was told to pay a \$50 fee to secure a May start date. The college emailed me and said, "Oh, we forgot. The welding shop is closed until September."

A college in Peterborough has a welding instructor. She was one of my former trainees. She's a good welder, but not an instructor. One of her recent trainees took her course, didn't learn enough, then came to our 10-week course. He wouldn't talk to me about it.

We recently developed a welding program for a literacy improvement organization. After a successful first run, the training job was handed over to the college.

Last week, I asked the chief MTCU rep in Peterborough how long it had been since he knew about Bill 43. In a very threatening and raised tone of voice, he said, "Are you asking me a skill-testing question?" I then reminded him that Sir Sandford Fleming College is getting \$30 million for a 28,000-square-foot trades training school. They are barely a 20-minute drive from where we are, and what do I get? Bill 43.

I mentioned to him that I was going to continue to try and train better welders out of a smaller, self-funded school. He said I was getting confrontational with him. I told him that earlier that morning, I had just talked with a student who completed a college welding course. There were 45 in that class. I said, "Wow. One instructor can teach 45 students." The student said, "No. There were two other men who were babysitters." I asked him, "What does that mean?" He said that he worked with the welding instructor occasionally, but most of the time the two other men babysat the class. I am repeating what he told me last Thursday morning. I said to the MTCU rep, "Are you not responsible for the colleges as well as the PCCs? What are you going to do? You have 45 young men and women wandering the streets who do not have the skills to get a job." In a very sour tone of voice, of course, he said that I should take it to the political level. I sit before you today.

Another person in the same class wrote, "While I did learn something, I see now that it's not nearly enough to get a job."

We can tell when another college in the province lets out another class: The phone rings off the wall with irate moms crying that their sons and daughters can't pass the weld tests. We bring them in and help them out with that.

1550

Gentlemen, please: The MTCU does not need more power. They need to do the job already at hand. What are we paying them for? They can't enforce the rules they already have.

Gentlemen, please: Get the MTCU out of the ivory tower at Mowat Block, put one or two of them in each MTCU office across the province, and tell them to go into the field and visit the PCCs. I would be glad to see him or her drop in twice a year. Presently, I live in fear of them with their present system. They threaten myself and others by telephone and email. They don't even know where I am.

Gentlemen, please: Ask for volunteers from each trade or occupational sector and form an advisory committee to help the MTCU stamp out the bad schools. If we keep going the way we are, all this province will have left is colleges. Trainees deserve a choice, as was in the past. We're littered with illegal schools who are ripping off the public and tarnishing our good name because the MTCU isn't doing what they're paid to do. The money stolen from the MTCU funding coffers by illegal schools will go a very long way to help the good PCCs do their job.

The Chair (Mr. David Oraziotti): I need you to wrap it up in a couple of seconds. Could you do that? Thanks.

Mr. Jonathan Bennett: Thank you. We want to be governed respectfully. We want to be heard. We deserve to be treated fairly, not threatened with Bill 43. My business may be for sale. Thank you for your time.

The Chair (Mr. David Oraziotti): Thanks very much for your presentation and for coming in today.

ACADEMY OF LEARNING, BELLEVILLE CAMPUS

The Chair (Mr. David Oraziotti): The last presentation of the day: the Academy of Learning, Belleville campus. Good afternoon, sir. Welcome to the Standing Committee on General Government. As you know, you've got 10 minutes for your presentation, so go ahead when you're ready.

Mr. Michel Ringuette: Okay. Thank you very much, Mr. Chairman and fellow board members. My name is Michel Ringuette. I'm a co-owner and co-director of the Academy of Learning, Belleville campus. I'll try not to be as passionate as my predecessor. A very nice guy when you really meet him, but he is very passionate about what he believes in. I do share a lot of his sentiments. I'll try not to over-repeat too many of the items that were discussed here earlier.

In preparation for this—it was very short notice. I took the time to read a lot of the debates that occurred in the past week. I've listened to some of the items and read the items. There are a few concerns that I have; one in particular is the policy directives that could be coming

out and about. If I were a paranoid person, this policy could probably wipe out all of my programs and I'd be out of business, but I'm not a paranoid person. I believe that the intention of the government is wanting to go the right way, but you're also giving the power to a person who can actually do that, so be cautious. Please. That's step one. I'll keep it shorter than what I've actually written out.

Another thing that was discussed earlier, the distribution of an order: It could be done by mail, home, address, and so on and so forth. That could also be a little dangerous, because here's an order that can be sent out and not really received by the appropriate person. There is no way of confirming that it was actually sent and received. So I'm feeling a little odd at that, because if I was to be served as being in an infraction of whatever policy and order and find out maybe three weeks or a month later I've been fined on a daily basis for something I didn't even know about, that's shameful. If we're going to be training our students with proper business ethics and approaches, delivery of such sensitive documents certainly shouldn't be happening in this very way.

Some of the things that I've noticed in the debates—and there are a lot of good comments. I appreciate that some did see the value of some private vocational schools in and around the province. Unfortunately, others did not see the value. I didn't hear much other than Mr. Wilson—I believe he mentioned one of the colleges in Sudbury where they had major issues, where students were there for a couple of years and, shamefully, did not get what was promised to them.

Just recently, again, Mr. Teglas also pointed out that George Brown College has had, unfortunately, another lawsuit against them.

Obviously, our public system may not be as good as one would like it to be. It's good in many ways. There are a lot of good productions but there are still a few flaws. I believe that MTCU also has a responsibility to look after them, to look into their business and make sure that there are no future flaws in there.

We're all human beings; we all make mistakes. Last week, I was sent an invoice for my TCAF. Part of that process is that the ministry contacts Equifax to see what my delinquency risk is. They used my home address instead of my business address, so Equifax has nothing to send to MTCU. Therefore, I had no report—high risk. That alone would have cost me an additional \$3,000 in fees had I not caught that and brought the corrections to it. I did it. Actually, the ministry was very good in resolving it very quickly last week.

Last year, I was out of luck. It was my own fault. I didn't check with Equifax and I assumed that Equifax was a good, ethical business—obviously not. They had me lost somewhere in God knows where—la-la land. They just didn't know about me. So last year, I was too late to put in the report and say, "I do pay my bills, rest assured."

Earlier in the presentations, I heard a few questions. Mr. Wilson, you asked the question, "How can we make

things a little better?" I remember about seven years ago, when Susan Hoyle was at the helm. She took the time to meet with the Academy of Learning at the head office and discuss how private colleges work. On that very same day, I gave her the invitation to come and see my particular campus. I was very pleased and very proud of what we do, and she actually came. Some of the changes are perhaps to encourage the ministry to better understand the private colleges; go out there, visit them and see exactly what's going on. I think there would be a little better appreciation for what we do.

In the package, I've put in a few testimonials from my students. People make choices when they come to private colleges for various reasons. Yes, a degree, but also for the great service that we provide. I take great pride in that. We're hands-on owners and everything that we do is dedicated to the student to make sure they do succeed. We make great efforts.

Mr. Clark, you said earlier, "Is there a bias out there?" When the Second Career strategy came into play, if somebody was unemployed and went to the ministry, here's the policy: "Go out there and research a few colleges. If you go to a private college, you have to check with a public college to see if they have a comparable program. If you go to a public college, that's good enough; don't worry about the private ones." Is there a bias? You tell me.

What we're looking for is very much the same as what you want: success for our students. Our success is equally the government's success. Help us out and we can work together, seriously. We have an association that's very dedicated and very passionate about what they do as well. They're the front line that can work with you. I hope that you do extend the invitation to them and sit and really talk and make sure that things do happen for the positiveness of the private vocational schools.

Are there any questions? I'm all over the place.

The Chair (Mr. David Orazietti): Thank you very much for your presentation. I believe Mr. McMeekin—

Mr. Ted McMeekin: Thanks very much for sharing. I particularly appreciated your acknowledgement that—I think you acknowledged that the government clearly has a role in terms of regulating private career colleges.

Mr. Michel Ringuette: Absolutely.

Mr. Ted McMeekin: And we do that—I'm maybe stating the obvious—so that all the good players and those who have goodwill aren't mitigated negatively by those who aren't up to speed.

Mr. Michel Ringuette: Granted, the intentions are all there. However, with the negativity that we've been receiving, being clumped in with the illegal operators, it has really shone a bad image on us. I deal with WSIB clients. I speak with their counsellors and their counsellors say, "Oh, my God. I'm looking at this again in the news. What's going on?" Are we concerned? Are you guys going to be around down the road? It is affecting our businesses.

Mr. Ted McMeekin: It's not the government's intent to reflect negatively on any good operator, clearly. You

referenced, I think at the outset of your presentation, your admonition to be cautious as we move forward. I think we're trying to be cautious here; in fact, we've been criticized in the assembly for not going far enough. We're looking for a balance, and we acknowledge quite openly that we're going to need to get more input from stakeholders as we go forward. I'm assuming that you're willing to be engaged with TCU in that process.

Mr. Michel Ringuette: I could be engaged. I certainly would recommend, as well, our association. They've studied this inside and out a lot better than I have, but I'd be more than happy to participate as well.

Mr. Ted McMeekin: They're one of the two major groups we have engaged with.

The Chair (Mr. David Oraziotti): Thanks, Mr. McMeekin. That's the time for your question. Mr. Wilson, go ahead.

Mr. Jim Wilson: Thank you very much, Mr. Ringuette. You mentioned also in your presentation here—the example I was given about a policy directive that would revoke an already-approved program during the briefing I had with ministry staff—there were some political staff there, too, from the minister's office. I just want you to comment on this—an example was nursing. One of the lawyers said, "Well, you know, Mr. Wilson, we have a surplus of nurses, or we're going to have a surplus of nurses. So we may want to send out a policy directive to tell career colleges to stop teaching nurses in their programs." I said to them, "These things are businesses. They are to try to respond, generally, to the market that's out there. If there's no market for nurses, they're likely to wind down the course themselves." That's what I was told, because it came up, going back to the two Michaels' presentations.

That showed me the lack of understanding, as you're all saying, in the ministry. Maybe none of them have been in business before—I don't know—but they didn't seem to understand the marketplace very well. That was the example, and I didn't have time that day to pursue other examples with them, but I would ask the association to make sure that we get other examples so that the government and legislators have a good understanding.

I must admit that in the 20 years I've been here, I don't think I ever met with career colleges. Some of your associations aren't that old, I guess. If it wasn't for the 2005 act, I probably never would have heard of you except through the newspaper. So I'm glad to see that you're getting organized and you took the time to come forward.

Do you want to comment on the policy directive?

Mr. Michel Ringuette: I don't know. To be honest with you, I don't know what—

Mr. Jim Wilson: It could be anything.

Mr. Michel Ringuette: It could be anything, but the thing is, you're giving somebody that kind of power, and that scares me. It really does. Just what is going to happen to us down the road if this policy—if somebody has a bad day or these inspectors who come in have a bad day and they start throwing things around—it does make me very nervous. We go out of our way to make sure that we are running within the guidelines of the ministry, but we're all human beings. If something was to tick somebody off for whatever reason, I don't know.

Our college is not a very big college; it's a very small college. We have approximately 60 students in our morning—are they all 100% happy? There are a few of them who are through the system because they're being told to be there through their caseworkers and so on, so they may not be so happy. A very large percentage are extremely happy.

The Chair (Mr. David Oraziotti): Sir, I'm going to have to stop you there. Thanks very much for your comments today and your presentation. That's all the time that we have.

Mr. Michel Ringuette: Okay. Thank you for having me.

The Chair (Mr. David Oraziotti): Just for the information of the members, so that you're aware, amendments that are proposed to this bill need to be filed by next week, Wednesday the 26th at noon. We will have clause-by-clause consideration on Monday the 31st after constituency week.

That's it. The committee is adjourned.

The committee adjourned at 1603.

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Standing Committee on General Government

Post-secondary Education
Statute Law
Amendment Act, 2010

Comité permanent des affaires gouvernementales

Loi de 2010 modifiant des lois
en ce qui concerne
l'enseignement postsecondaire



Chair: David Oraziotti
Clerk: Trevor Day

Président : David Oraziotti
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Monday 31 May 2010

Lundi 31 mai 2010

*The committee met at 1408 in room 151.*POST-SECONDARY EDUCATION
STATUTE LAW
AMENDMENT ACT, 2010
LOI DE 2010 MODIFIANT DES LOIS
EN CE QUI CONCERNE
L'ENSEIGNEMENT POSTSECONDAIRE

Consideration of Bill 43, An Act to amend the Post-secondary Education Choice and Excellence Act, 2000, the Private Career Colleges Act, 2005 and the Ontario College of Art & Design Act, 2002 / Projet de loi 43, Loi modifiant la Loi de 2000 favorisant le choix et l'excellence au niveau postsecondaire, la Loi de 2005 sur les collèges privés d'enseignement professionnel et la Loi de 2002 sur l'École d'art et de design de l'Ontario.

The Chair (Mr. David Orazietti): Okay, folks. Good afternoon and welcome back. Bill 43, An Act to amend the Post-secondary Education Choice and Excellence Act, 2000, the Private Career Colleges Act, 2005 and the Ontario College of Art & Design Act, 2002—we're here for clause-by-clause.

I don't know if there are any introductory comments anybody wishes to make? Mr. Wilson, go ahead.

Mr. Jim Wilson: Yes, just from the beginning my colleague Mr. Clark and I, on behalf of the PC caucus: Generally, we haven't changed our minds since we heard from the witnesses, all of whom were negative except for the Ontario College of Art and Design, who are obviously in favour of their name change to "University." I met with them, as did Mr. Clark, just a few moments ago in our offices to reassure them that we're very supportive of that section of this act. It's unfortunate, unlike Algoma College, which became Algoma University during my time; Ryerson Polytechnic, which became Ryerson University during my time; and I think three or four others in the 20 years that I've been here—they all had separate bills where they could get them framed and signed by the minister and be very proud of them and not have stuff like the private career colleges here.

What we heard from the witnesses was that the rest of the bill dealing with private career colleges and other colleges is heavy-handed; it's not necessary. It won't address the stories we've been hearing in the media from time to time about rogue colleges that aren't even col-

leges and shouldn't be allowed to call themselves career colleges if the current laws were enforced. It doesn't address the Ombudsman's comments, in his two scathing reports, that we need to go after the unregistered colleges that are pretending to sell legitimate services to students. This bill doesn't do that. It gives more power to the minister and his minions in the ministry while not addressing the real issues.

Some of the things we heard were that the government does not need these amendments to the Private Career Colleges Act in order to close the bad schools. That came from the Canadian Welding Skills college. This bill tars well-run private career colleges with a brush that should be applied to illegal schools; that came from the Academy of Learning in Belleville. You should go after the scoundrels, the illegal private trainers; don't injure private career colleges; that comes from the Association of Private Colleges. Speed up the approval process for private career colleges; that came from the Academy of Learning and a couple of other groups.

We heard that the current bill is not enforced—and that came from Secta Global Education Solutions—that there are inspectors out there who are without training, without an understanding of what career colleges try to do.

All in all—Mr. Clark may have some comments—generally we're trying to make it clear that we're not supportive of the act. We are supportive of the one section of the act, but given that we understand from legislative counsel that we can't get rid of most of the act and just keep in the part that deals with the College of Art and Design, we'll be voting against those sections until we get to the College of Art and Design.

If there aren't substantial amendments to this legislation put forward by the government—and I don't see any on the table—then we'll be voting against the legislation. We just don't think, other than window dressing, it does what the public might think this does, which is go after the bad apples. It does not go after the bad apples. If you want to go after the bad apples, introduce fraud legislation. That's what's happening out there when people present themselves as career colleges and they're not even registered.

With that, I'll give it to my colleague Mr. Clark.

Mr. Steve Clark: Again, just to echo what Mr. Wilson was saying, it became pretty obvious during the hearings that the Ontario College of Art and Design was being messed in with a badly written bill. I know that on

the other side we had Mr. Kwinter, who spoke very, very eloquently about the need and the fact that the college is so tuned in to becoming a university. It's just sad that it's being lumped in with this private career college vendetta that the government is on.

The question I have, and I can't understand—perhaps the counsel can talk about how and why we can't separate this Ontario College of Art and Design bill making it a university and move forward with it, because the other parts of the bill have some significant issues. Could someone address this at this point?

The Chair (Mr. David Orazietti): Thank you, Mr. Clark.

Mr. Rosario Marchese: It's a political question.

Interjections.

The Chair (Mr. David Orazietti): If Mr. Nigro wants to comment, he certainly is welcome to, but the bill was drafted in the form that it is by the government. You have the opportunity to vote against various sections of the bill or the amendments that are put forward.

Mr. Nigro, do you care to comment?

Mr. Albert Nigro: Only to echo the comments made by the Chair: If the members don't like parts of the bill, the members can vote against those sections. The effect of it, if the motions were successful, would be that you'd be left only with the amendments to the Ontario College of Art & Design Act.

The Chair (Mr. David Orazietti): Mr. Marchese, do you have any other comments—

Mr. Steve Clark: Mr. Chair, can I just interject one more issue? There was a late submission by the Academy of Learning, Hamilton Mountain, that came after the hearing. I feel it's appropriate that their comments be read into the record, if I might be provided that leeway, sir.

The Chair (Mr. David Orazietti): All members have it; all members have a copy of it. We had sort of a loose deadline for that—

Mr. Jim Wilson: We'd like it read into the record.

The Chair (Mr. David Orazietti): If you can do it within the time—you have 20 minutes for your introductory comments, as do all caucuses. So you've got about another 10 minutes or so.

Mr. Steve Clark: Sure. I'll be quick, then. The submission was dated May 27 from the Academy of Learning, Hamilton Mountain. Basically, it's from both Lino D'Souza and Rachel D'Souza. It reads as follows:

"Dear Mr. Day,

"As a private career college respected owner/operator in Hamilton for the last 20 years, I want to once again register my opposition to Bill 43, which is currently before the legislation. This bill and its amendments to the PCC Act, 2005 needs to be stopped immediately. 'Authority without accountability' always leads to trouble even when it is initiated with the best of intentions. I am concerned about the effects this will have on my ability to operate my college without risk of unnecessary government intervention. Proper input from colleges is re-

quired before appropriate amendments can be made to the PCC Act 2005.

"This bill, as drafted, will contribute to:

"(a) the demise of the private career college sector;

"(b) the denial of re-training and re-skilling of many Ontarians including recent immigrants who migrated here in pursuit of a better life for themselves and their families;

"(c) protectionist measures (in support of publicly funded educational institutions only) which are antiquated in an otherwise global economy;

"(d) an encroachment on the federal power of trade and commerce, which is constitutionally entrenched under s.91 of the Constitution Act, 1867;

"(e) expropriating from investors and stakeholders to whom the government promised a set of rules that the government no longer wishes to adhere to;

"(f) providing overly broad and subjective powers to persons with no specific expertise in education or curriculum standards, with widespread consequences;

"(g) the government compromising a core value of the PCCA, 2005, namely an owner's ability to be 'financially responsible.' To be financially responsible, one must be financially stable first, and that means the law must be known and not arbitrary.

"I urge you to hold wider consultations and a more rigorous debate to discuss the intended and 'unintended' impact on the PCC sector. Career colleges provide a valuable service to the community. Academy of Learning Career and Business College provides programs with a hands-on approach to training ranging from business to health care, to technology and design. Over 35,000 PCC graduates enter the workforce each year in Ontario alone! The recent regulatory changes seem to increasingly cast the entire sector as a group of semi-criminals that need to be policed. There is a definite need to change this perception.

"Your careful consideration in this important matter will be much appreciated."

I believe both documents were identical, so—

The Chair (Mr. David Orazietti): Okay. Done. In the record. Everyone has a copy of it.

Any further comments? Mr. Marchese.

Mr. Rosario Marchese: We're going to have third reading debate and we will get an hour, so we'll have plenty of time to be able to raise all of our opinions.

Interjection: It won't be an hour; it's time-allocated.

Mr. Rosario Marchese: Even 20 minutes will be—

Interjections.

The Chair (Mr. David Orazietti): Folks, we're going to move to section 1. I believe everyone has a copy of the proposed amendments; there are 21 of those. For section 1, there are no proposed amendments. Shall section 1 carry? Carried.

Section 2, first government motion: Mr. McMeekin.

Mr. Ted McMeekin: Mr. Chairman, I've still got a bit of an allergy problem so I'll speak to provisions but some of my colleagues are going to—

The Chair (Mr. David Oraziotti): Mr. Levac, go ahead, read.

Mr. Dave Levac: I move that paragraph 2 of subsection 1(4) of the Post-secondary Education Choice and Excellence Act, 2000, as set out in subsection 2(2) of the bill, be struck out.

The Chair (Mr. David Oraziotti): Any debate?

Mr. Rosario Marchese: Explanation?

The Chair (Mr. David Oraziotti): Mr. McMeekin, go ahead.

Mr. Rosario Marchese: Sorry, Ted, just for the record.

Mr. Ted McMeekin: Sorry, I was fiddling with my notes here, thinking I'd speak for 20 minutes and decided that I would forego you having to listen to that.

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The specific provision, as I recall, had to do with some recommendations we gleaned from consultation with Meritus University, I believe on the east coast, that had to do with some recruitment issues and the definition of "recruitment." We felt that it was appropriate to drop that reference from the legislation because the inclusion of "recruitment activities" could be inadvertently restrictive, and that's not in keeping with our government's intent to promote more international students in Ontario. We felt this was a helpful change to make based on the input we got from Meritus University in New Brunswick.

The Chair (Mr. David Oraziotti): Any further comments? Seeing none, all those in favour? Opposed? The motion is carried.

Shall section 2, as amended, carry? Opposed? That's carried.

Sections 3, 4, 5, 6, 7, 8 and 9: There are no amendments. Shall they carry? Carried.

Section 10, Conservative amendment number 2: Mr. Wilson, go ahead.

Mr. Jim Wilson: I move that subsection 10.2(8) of the Post-secondary Education Choice and Excellence Act, 2000, as set out in section 10 of the bill, be struck out and the following substituted:

"If review requested

"(8) If a person who has received a notice of contravention applies for a review under subsection (6), the minister shall conduct the review in a reasonable time and shall commence the review within 30 days after he or she has received the notice under subsection (6) and shall otherwise conduct the review in accordance with the regulations."

This amendment deals with private universities. Private career colleges asked for this change, so we wanted to make sure it applied to private universities as well. It would ensure that any school charged with an offence under the act be able to appear quickly before the Licence Appeal Tribunal so that their case can be heard within 30 days.

The Chair (Mr. David Oraziotti): Mr. Marchese, go ahead.

Mr. Rosario Marchese: I wanted to say that I support this Conservative amendment because it's a reasonable

request. The government's motion simply says, "and shall otherwise conduct the review in accordance with the regulations." Clearly what the Tories are trying to get at, which the private colleges expressed, is that they need some certainty, and the government's language doesn't give the certainty that there will be timely review of any contravention. And I agree with that. What the Conservative motion does is to put in that a review shall happen within a reasonable time, and then they say that it shall happen "within 30 days after he or she has received the notice under subsection (6)...." I think that is a reasonable request, and I'll be supporting it.

The Chair (Mr. David Oraziotti): Mr. McMeekin.

Mr. Ted McMeekin: I guess we were maybe hearing different things when the presenters were making their case on the various issues. One of the concerns was that we not rush these particular reviews. We were swayed to in fact go with that line of thinking.

The inclusion of rigid timelines, particularly given the kind of burden that falls already on the Licence Appeal Tribunal—I know as a former minister who had some responsibility in that area just how backed up they can be—just seemed inappropriate. We do agree that time is always of the essence, and we'll undertake to move as quickly as we can. But we don't feel a rigid timeline is helpful to the government or the private colleges, which, in fact, pointedly said that they wanted us to take time whenever these kinds of reviews were called for. So we won't be supporting that.

The Chair (Mr. David Oraziotti): Mr. Marchese.

Mr. Rosario Marchese: I'm not sure I'm clear, Parliamentary Assistant. What your motion says is that if there's a contravention, you shall "conduct the review in accordance with the regulations." What the Conservative member is saying, and which I am supporting, is that we don't know what that regulation states or will state. Will it happen within a day, two days, 10, 20, 30 days, two months? We don't know.

What they're proposing is a time limit. That means you could rush, as Marchese has said, when there are rogue folks involved who are hurting students. You can rush. What this motion says is that if there is a contravention, it shall be done within 30 days. So it could happen after one day, if you wanted to, assuming it's a rogue college that's set up. But if it's one of the colleges that is saying, "We're living by the rules. If there's a contravention, we don't want to wait three or four or six months, we want it to happen soon"—the point is, you could have it both ways, and I'm not quite sure I understood what you were saying.

Mr. Ted McMeekin: We think that, out of a spirit of administrative fairness, we would move on any review as expeditiously as we can, but we just don't agree that we need a rigid timeline to do that. The principle of administrative fairness would of course involve a commitment to moving as quickly as we can, but there are some, perhaps, difficulties with that. The rogue situation, where there was some urgency, obviously would be responded to more quickly. We just don't want to tie our hands, or

the hands of the career colleges, some of whom were saying, "Go a little bit slower. Make sure you get it right." So that's why we're going to oppose this motion.

The Chair (Mr. David Oraziotti): Any further comments? Seeing none, all those in favour? Opposed? The motion is lost.

Shall section 10 carry? Carried.

Sections 11 and 12: no amendments. Shall 11 and 12 carry? All those in favour of sections 11 and 12? Opposed? It's carried.

Section 13, Conservative motion number 3: Mr. Wilson, go ahead.

Mr. Jim Wilson: I move that clause 12.1(c) of the Post-secondary Education Choice and Excellence Act, 2000, as set out in section 13 of the bill, be struck out.

This concerns private universities. This would strike out the portion of the bill that allows for service of court documents by addressed mail. This was requested in public hearings by colleges, so we added it to the universities portion of the bill too. Colleges feel that this denies them due process, the way the bill is written now.

The Chair (Mr. David Oraziotti): Further comment? Mr. Marchese.

Mr. Rosario Marchese: I just wanted to make an argument in support of this: The elimination of (c) is contained in (b) on page 10. What section (b) does is to say, "sent to the ministry using a method of mail delivery that permits the delivery to be verified...." So (c) is the same as (b), except it allows for verification. That is, I think, the argument the Tories want to make with respect to getting rid of (c), and it's for that reason that I would support it. Because what that does is to eliminate the excuse that would say, "I didn't get it." So (b) does that: They get a notice, it's verified and there is no excuse. Whereas if (c) is applied, they get a notice and say, "Oh, we didn't get it," and then there's an excuse. So eliminating (c), in my mind, is okay.

The Chair (Mr. David Oraziotti): Response? Mr. McMeekin?

Mr. Ted McMeekin: Of course, Mr. Chairman. There are several motions that relate to the way the notice is received, and we'll be opposing all of those.

It's important to point out that we're talking about routine notices here; we're not talking about notices where there's a provincial offence that's being registered. That, of course, would be subject to judicial review. We're talking about other kinds of things.

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Nothing in the proposed legislation would affect a person's legal rights under existing legislation. If there was some offence that we were drawing attention to or some charge that was going to be laid, the person has rights before the courts. So this is to do more with the routine correspondence that needs to be made. It's consistent, by the way, with other provisions and other acts in terms of contacting stakeholders. We intend to support this—or, not support this—sorry; oppose it.

The Chair (Mr. David Oraziotti): Mr. Marchese.

Mr. Rosario Marchese: Parliamentary assistant, I'm trying to understand it. So (b) is the same as (c), except (b) says that if you send something, it's got to be verified, and that gives you, the sender, certainty. I'm not quite sure. You made an argument about, "These are routine notices." I understand that. But (b) covers it. It's not enough for you; you need (c) as well?

Mr. Ted McMeekin: Yes, we feel we do.

Mr. Rosario Marchese: It doesn't make any sense, but there you have it.

The Chair (Mr. David Oraziotti): Any further comment?

Mr. Rosario Marchese: No. We've had more than enough.

The Chair (Mr. David Oraziotti): All those in favour of Conservative motion number 3?

Mr. Rosario Marchese: The NDP supports it.

The Chair (Mr. David Oraziotti): It's noted. Opposed? The motion is lost.

Conservative motion number 4: Mr. Wilson.

Mr. Jim Wilson: Dealing with the same section of the bill: I move that subsection 12.1(3) of the Post-secondary Education Choice and Excellence Act, 2000, as set out in section 13 of the bill, be struck out.

Mr. Rosario Marchese: This is pertinent to the previous motion that failed. Is this necessary?

Mr. Jim Wilson: Yes, it's a subsequent motion.

Again, just for the record, this concerns private universities. This would strike out the portion of the bill that allows for service of court documents by addressed mail. This was requested in the public hearings by colleges, so we applied it to universities as well. Stakeholders feel that this is a denial of due process. It is very similar to the previous one.

The Chair (Mr. David Oraziotti): Any further comments? Legal counsel, do you want to comment on that?

Mr. Albert Nigro: Currently, the section limits the use that ordinary mail can be used in serving documents. The effect of the motion would simply remove that limitation. So, in effect, it would broaden the ability of the ministry or the minister to use ordinary mail, if this motion were to pass, in law. But the motion does stand alone. It is not contingent or dependent on the previous motion.

The Chair (Mr. David Oraziotti): Okay, thank you, Counsel.

Any further comments? Mr. McMeekin.

Mr. Ted McMeekin: Our arguments are the same.

The Chair (Mr. David Oraziotti): Okay. All those in favour of Conservative motion number 4? Opposed? The motion is lost.

Conservative motion number 5: Mr. Wilson, go ahead.

Mr. Jim Wilson: I move that clause 12.1(4)(b) of the Post-secondary Education Choice and Excellence Act, 2000, as set out in section 13 of the bill, be amended by striking out "or (c)" at the end.

This concerns private universities. Colleges asked for this clause to be removed, so we added it to the universities portion of the bill too. This would strike out the

portion of the bill that allows for service of court documents “on a director or officer of the corporation or on any manager, secretary or other person apparently in charge of any business premises” or by mailing the documents to the last known business address. This was requested in public hearings. They feel that it is a denial of due process as currently written in the act.

The Chair (Mr. David Oraziotti): Any further comment? Mr. McMeekin, go ahead.

Mr. Ted McMeekin: We think this is an unnecessary duplication because the fines are publicly available on the government’s e-Laws website, currently. It would be an additional, duplicatory and unnecessary provision, so we intend to not support it on that basis.

The Chair (Mr. David Oraziotti): All those in favour of Conservative motion number 5? Opposed? The motion is lost.

Shall section 13 carry? Opposed? It’s carried.

Section 14: no amendments. Shall it carry? Carried.

Section 15: Conservative amendment number 6. Mr. Wilson.

Mr. Jim Wilson: Do you want to read it?

Mr. Steve Clark: Yes, sure. I’ll move it, Mr. Chairman.

The Chair (Mr. David Oraziotti): Mr. Clark, go ahead.

Mr. Steve Clark: I move that section 13 of the Post-secondary Education Choice and Excellence Act, 2000, as amended by subsection 15(2) of the bill, be further amended by adding the following subsection:

“Publication of penalties and fines

“(3) The minister shall ensure that the amount of the penalties prescribed under clause (1)(h) and the amount of any fines prescribed in respect of this act under the Provincial Offences Act are publicly available on a website maintained by the ministry and are otherwise reasonably made available to members of the public.”

Again, this concerns private universities. It would require that the minister post the fines under the act on the ministry website. It was requested at public hearings that the information be easily accessible, and for the layman, this would provide that option.

The Chair (Mr. David Oraziotti): Okay, thank you. Mr. Marchese.

Mr. Rosario Marchese: This is another reasonable request made by the Tories, which is unusual—that they make a number of reasonable requests.

Interjection: You’re killing us.

Mr. Rosario Marchese: Tell me when you think my support is hurting you, okay?

What they’re saying is that the fines should be posted and made publicly available. I think this is okay. I’d like to hear the argument.

Mr. Ted McMeekin: Well, they are publicly available right now on the e-Laws website, so it’s a duplication.

Mr. Rosario Marchese: If you support this, it wouldn’t hurt you; it would simply state the obvious, right?

Mr. Ted McMeekin: We’re not in favour of unnecessary duplication, if that’s the question.

Mr. Jim Wilson: This is to ensure that under this act and this ministry, you actually do it.

Mr. Rosario Marchese: You understand that Jim is now going to go look on the website to make sure it’s there, because he doesn’t believe you. You know that.

Mr. Ted McMeekin: I’m sure he is.

Mr. Rosario Marchese: Okay.

The Chair (Mr. David Oraziotti): Conservative amendment 6: All those in favour? Opposed? The motion is lost.

Shall section 15 carry? Carried.

Section 16: It’s a notice, number 7. Go ahead. It will speak to the section.

Mr. Jim Wilson: We were asking that the section be struck, but legislative counsel has indicated that we can’t really do that. Our only option is to vote against the section as a whole.

The Chair (Mr. David Oraziotti): Any further comment? Mr. Marchese, go ahead.

Mr. Rosario Marchese: I just wanted to make an argument here, but I won’t be supporting this one.

It was interesting that the private career colleges came and told us that there was a gathering they had where the minister went, and the minister said to them, “Don’t worry, the changes are very minor. It won’t affect you very much,” or “It won’t affect you.” I forget whether the minister told them, “You’re going to like it.” I forget whether he said that. But clearly, the private colleges came a couple of days later and were horrified when they saw the bill, because they hadn’t seen the bill when the minister said, “The changes are technical in nature, minor.”

I simply want to say that I support this section, even though I believe that private colleges should have had a better opportunity to present their case, because what they said that day was, “We want you to go after those rogue institutions because we believe they’re giving us a bad name.” However, when they looked at this section, they said, “We’re going to be directly affected in adverse, negative ways by this because you might indirectly be attacking many of us who are legitimately doing the job” that many people believe they’re doing a good job of. Here, I believe it would have been good to have had some useful discussion on or debate with the ministry officials and the private career colleges, and that clearly didn’t happen.

While I believe this section should be in it, what many of the deputants said on the day of the hearings I found very reasonable, by way of their submissions. They have some concerns that I believe are legitimate. I don’t support this motion, but I did want to state on the record that a lot of the deputants made a very, very good case when they came before us, and there could be reasons to worry.

The Chair (Mr. David Oraziotti): Any further comment? Mr. McMeekin, go ahead.

Mr. Ted McMeekin: Just briefly: We, of course, always support useful discussions—

Mr. Rosario Marchese: It didn't happen.

Mr. Ted McMeekin: Well, we've made a commitment through the regulatory process to have extensive ongoing consultations. That was repeated several times.

I appreciate Mr. Marchese's obvious points in support of the section, because the section itself deals with compliance issues. It deals with the credentials that are an important part of any private career college regime. Most important of all, it relates intimately with the need for better student protections. If you take that out of the bill, then you don't have much of a bill left, so we'll not be supporting it.

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Interjection.

Mr. Ted McMeekin: We will not be supporting it, yes. We're not here to look at rear-view mirrors but to move forward. We want to shape the future, not fear it, and that's what this bill is all about.

The Chair (Mr. David Oraziotti): Thank you.

For clarification, we're not voting on a motion. This is section 16.

Shall section 16 carry? All those in favour? Opposed? Okay, that's carried.

Section 17: Mr. Wilson, go ahead.

Mr. Jim Wilson: This is a similar amendment. This time I will move it as an amendment.

We move to strike section 17 of the bill.

The Chair (Mr. David Oraziotti): That's out of order, as you're probably aware, Mr. Wilson. You can't move that as an amendment, but you can certainly speak against the section. But we'll be voting on the section as a whole, as opposed to an amendment.

Mr. Jim Wilson: Well, I mean, the most effective way to get rid of the changes to the Private Career Colleges Act that the government is suggesting in Bill 43 is to strike this section, which would gut the bill. Therefore, we'll just be voting against this section. It's the strongest protest we can do.

Again, Mr. Marchese's quite right. We heard extensively from everyone who was able to appear on a day's notice—over a weekend is all the groups got, and they were at a private careers conference for all the colleges across Canada and their associations in, I believe, western Canada at the time we did have public hearings on the Monday. We heard overwhelmingly that they were caught off guard. They thought they had a good relationship and hoped to have a good relationship with the ministry. They simply were told ahead of time that there were going to be very minor amendments that wouldn't affect the powers of the minister, the ministry or the inspectors, and that turned out not to be the case. In fact, it turned out to be quite the opposite.

We're doing our best on this side, although we realize it's an uphill battle, to send out the message that we don't agree with the amendments to the acts, as put forward by the government at this time, without proper consultation. We make the commitment that if we do form the

government next year, if there continues to be problems in this sector, our doors are open to private career colleges. They educate thousands and thousands in over 400 colleges, and for the most part do a very good job. This bill doesn't go after the bad apples that the government's telling the public it does.

The Chair (Mr. David Oraziotti): Any further comment? Mr. McMeekin.

Mr. Ted McMeekin: For the record, too, Mr. Chair, we're largely supportive of the private career colleges, most of which are doing an outstanding job, but by our not moving forward or by striking down this entire section, what we are in essence doing is scrapping the ability of the superintendent to revoke any program approval. We don't think that's consistent with trying to ensure good, quality education and consumer protection for our students.

The Chair (Mr. David Oraziotti): Thank you.

Shall section 17 carry? All those in favour? Opposed? It's carried.

Section 17.1: Conservative amendment number 9. Mr. Wilson, go ahead.

Mr. Jim Wilson: I move that the bill be amended by adding the following section:

"17.1 Section 19 of the Act is amended by adding the following subsections:

""Effect of notice

""(5.1) If an applicant or registrant gives notice requiring a hearing under subsection (3), the proposal of the superintendent is stayed until the tribunal makes an order under subsection (6).

""Hearing within 30 days

""(5.2) The tribunal shall commence the hearing within 30 days after the applicant or registrant gives notice requiring a hearing under subsection (3)."

This, again, was requested at the public hearings. It would allow a school that has had its licence revoked—

The Chair (Mr. David Oraziotti): Mr. Wilson, I'm sorry, I'm going to have to stop you there. You've read it into the record, but I'm informed that the motion is out of order because this section of the bill is not open for consideration. This motion's out of order, and we need to move on.

Section 18, Conservative motion 10.

Mr. Jim Wilson: I move that subsection 25(2) of the Private Career Colleges Act, 2005, as set out in section 18 of the bill, be amended by adding "Subject to subsection (5)," at the beginning.

This amends the bill to provide that policy directives to revoke a licence take effect only after six months and that students in a program for which approval is revoked have enough time to ensure that they can continue their education. It was a very reasonable request at committee. If nothing else is accepted today, I would think this is probably the most reasonable, if I were in the government's shoes. So I would ask the government members to sincerely consider this on behalf of the students.

Mr. Ted McMeekin: We agree with that; we agree.

Mr. Jim Wilson: Agree?

Mr. Ted McMeekin: We agree.

Mr. Jim Wilson: Hold on, let me try another argument.

Mr. Dave Levac: Try another one. I think we can unanimously support this.

Mr. Ted McMeekin: Number 11, which is a government motion, is essentially the same, so we have no difficulty supporting this.

The Chair (Mr. David Oraziotti): Okay. Mr. Marchese—

Mr. Ted McMeekin: We'll withdraw number 11 because 10 covers it. Thank you for your leadership on that.

The Chair (Mr. David Oraziotti): We'll deal with number 10 first. All those in favour of Conservative motion 10? Opposed? That's carried.

Mr. Ted McMeekin: We withdraw 11, Mr. Chairman.

The Chair (Mr. David Oraziotti): Government motion 11 has been withdrawn.

Conservative motion 12.

Mr. Steve Clark: I move that section 25 of the Private Career Colleges Act, 2005, as amended by section 18 of the bill, be further amended by adding the following subsection:

"Same, exception

"(5) Despite the revocation of an approval of a credential as the result of a policy directive issued under clause 53(1)(b), a student who is enrolled in a program at the time of the revocation is permitted to graduate and receive the credential associated with the program."

This was requested at the public hearings. It's pretty self-explanatory. It would allow a student to continue the training if the school's licence is revoked.

The Chair (Mr. David Oraziotti): Any further comment? Mr. McMeekin, go ahead.

Mr. Ted McMeekin: Who said, "Don't let excellence become the enemy of the good"? This is clearly good thinking. I want to compliment the opposition for it, but note that we don't believe it goes far enough in terms of providing student protection. We will vote against this but support 13, which takes the essence of what was just shared by the opposition and expands it to make it more fulsome and more protective of students.

The Chair (Mr. David Oraziotti): Mr. Marchese.

Mr. Rosario Marchese: I just have a comment which is slightly different from the two previous speakers'. If there is a problem in some program—what this motion would say is that they're permitted to graduate and receive the credentials associated with the program. What if there's a problem, Jim, with a particular program that's being provided? Like it's either been discredited by research or by the Ombudsman, let us say. What this says is, "Oh, too bad. They'll have to finish the program" versus getting their money back, which is what we think should happen, and/or being directed to a new program, which is what really should be happening. That's why I have concerns about what you say here, because if it's a bad program, the wrong program—it's not being taught

well; maybe they're not getting the right credentials—shouldn't they be getting their money back and going somewhere else? That's my response.

Mr. Jim Wilson: No, a program could be perfectly good. The college may have its licence revoked for other reasons than that particular program. This was requested in public hearings, "Don't penalize the school because it didn't file papers on time"—

Mr. Rosario Marchese: I'm thinking of another situation.

Mr. Dave Levac: Don't penalize the student.

Mr. Jim Wilson: Don't penalize the student because the school screwed up in its administration.

Mr. Rosario Marchese: You're thinking of something different. Okay.

Mr. Jim Wilson: Yes. So this is to allow them to continue in the program. If the program is still good and the school loses its licence, should you penalize the student?

Mr. Rosario Marchese: Okay. Gotcha.

The Chair (Mr. David Oraziotti): Any further comment? Seeing none, Conservative motion 12: All those in favour? Opposed? The motion is lost.

Government motion 13: Mr. Levac.

1450

Mr. Dave Levac: I move that section 25 of the Private Career Colleges Act, 2005, as amended by section 18 of the bill, be further amended by adding the following subsection:

"Same, exception

"(5) Despite the revocation of an approval of a credential as the result of a policy directive issued under clause 53(1)(b), a student who is enrolled in a program at the time of the revocation is permitted to graduate and receive the credential associated with the program, unless one of the following applies:

"1. The policy directive revoking the approval introduces a new standard related to public health or public safety.

"2. The policy directive revoking the approval relates to a vocational program that is regulated by a third party and,

"i. the third party changes the entry requirements necessary to practise the vocation, and

"ii. the changes are such that unless the private career college adopts the requirements prescribed by the third party, graduates from the program would not meet the entry requirements to practise the vocation."

The Chair (Mr. David Oraziotti): Further comments? Mr. McMeekin.

Mr. Ted McMeekin: It's reasonably self-explanatory. This is in direct response to concerns raised by presenters in submissions that a new program standard might, in fact, prevent students currently enrolled in the program from completing the program. It does address in large part the concern that Mr. Marchese raised about the difficulties with the program. If it's a trade, for example, if you graduate from that program based on the current provision, but it isn't a high enough standard to allow you entry into the trade, then your piece of paper is

meaningless. So we would want to make sure that the kinds of changes could be made, and the student could, in fact, meet that new standard so that the training would not be a waste of time.

The Chair (Mr. David Oraziotti): Any further comments? All in favour of government motion number 13. Opposed? The motion is carried.

Shall section 18, as amended, carry? Opposed? Carried.

New section 18.1: Mr. Clark, you've got it? Go ahead.

Mr. Steve Clark: I move that the bill be amended by adding the following section:

"18.1 Subsection 39(8) of the act is amended and the following substituted:

"If review requested

"(8) If a person who has received a notice of contravention applies for a review under subsection (6), the minister shall conduct the review in a reasonable time and shall commence the review within 30 days after he or she has received the notice under subsection (6) and shall otherwise conduct the review in accordance with the regulations."

Again, this just is reinforcing what we've heard. The fact that the issue of acting on it—

The Chair (Mr. David Oraziotti): Okay, Mr. Clark, as you've probably anticipated, I need to stop you there. The motion is out of order because this section of the legislation is not open. So we're going to move on.

Section number 19, Conservative amendment number 15. Go ahead.

Mr. Jim Wilson: It's another one of those amendments where we'd like to strike out section 19 of the act, so I move that we strike out section 19 of the bill. This would, again, strike out changes to the Private Career Colleges Act which specifically deal with the section regarding increased fines.

The Chair (Mr. David Oraziotti): Any further comments on section 19? Mr. McMeekin, go ahead.

Mr. Ted McMeekin: Well, this particular section, as you know, provides the potential for significantly increased fines for provincial offences. It's designed to provide better protection for students and ensure that the Private Career Colleges Act is in line, in terms of the penalties, with provisions that are existent with other pieces of consumer legislation. I know a bit about that as the former Minister of Consumer Services. That would be consistent.

The Chair (Mr. David Oraziotti): Okay, so to—

Mr. Rosario Marchese: Just a quick point.

The Chair (Mr. David Oraziotti): Go ahead.

Mr. Rosario Marchese: I remember making the argument—I haven't heard any argument against what I've been saying—and that is that current fines allow for up to \$100,000 to be levied; the highest fine levied so far has been \$39,000, so I said, "If we haven't even reached the \$100,000 mark yet, why is it that we want to add a higher fine, given that we haven't applied the maximum so far?" I haven't received an answer. Does the PA have an answer to that?

Mr. Ted McMeekin: Sure.

Mr. Bob Chiarelli: Ten years of inflation.

Mr. Ted McMeekin: It's more than just inflation. Provincial offences, as you know, Mr. Marchese, are adjudicated by the government. The courts are frequently involved, and we don't direct the courts as to fines, although we are signalling to the courts, through this particular section, a need to perhaps broaden the scope of vision when it comes to fines.

The Chair (Mr. David Oraziotti): All right, we are voting on section 19. There's no amendment. We're just on the section itself.

All those in favour of section 19? Opposed? It's carried.

Section 20: Conservative amendment number 16. Go ahead, Mr. Wilson.

Mr. Jim Wilson: I move that clause 53(1)(b.1) of the Private Career Colleges Act, 2005, as set out in subsection 20(1) of the bill, be struck out.

This strikes out the clause that allows for delivery of court documents by regular mail for colleges. Stakeholders feel this denies them due process. We had a similar amendment dealing with the previous act.

The Chair (Mr. David Oraziotti): Just briefly, Counsel, go ahead.

Mr. Albert Nigro: I'm afraid I have to apologize to the committee and to the member. I misnumbered this motion. It should be a reference to clause 51(1)(b.1) rather than 53. I was having some computer problems that morning. It's not an excuse, but it is the reason I got a little befuddled.

Interjection: Okay; accepted.

Mr. Ted McMeekin: I'm confused by it too, so thanks for that.

The Chair (Mr. David Oraziotti): Mr. McMeekin.

Mr. Rosario Marchese: You couldn't find it, eh?

Mr. Ted McMeekin: We did actually try to figure out how this sort of fit, because the reference didn't seem to be consistent with the bill. Notwithstanding that, the proposed provisions for service of routine matters and notices by mail, of course, would not affect a person's legal rights, as I noted earlier, and would facilitate effective administration of the Private Career Colleges Act, 2005. It's a little more than just cleaning up the bill, but it certainly is consistent with some provisions we've already passed. And now that the confusion is cleared up, I know why we're not supporting it.

The Chair (Mr. David Oraziotti): Any further comments?

All those in favour of Conservative motion number 16? Opposed? The motion is lost.

Number 17: Mr. Wilson.

Mr. Jim Wilson: I move that subsection 51(1.2) of the Private Career Colleges Act, 2005, as set out in subsection 20(2) of the bill, be struck out.

Again, this strikes out the clause that allows for delivery of court documents by regular mail. Stakeholders feel that this denies them due process as written in the amended act.

The Chair (Mr. David Orazietti): Any further comments?

Mr. Ted McMeekin: We just defeated number 16, which is essentially the same motion, so we'd tend not to support it for the same reasons.

The Chair (Mr. David Orazietti): All those in favour of Conservative motion number 17? Opposed? The motion is lost.

Number 18: Mr. Wilson.

Mr. Jim Wilson: I move that clause 51(2)(b) of the Private Career Colleges Act, 2005, as set out in subsection 20(3) of the bill, be amended by striking out "or (c)" at the end.

This strikes out the clause that allows for delivery of court documents by regular mail. Stakeholders feel, and felt, that this denies them due process.

The Chair (Mr. David Orazietti): Mr. McMeekin.

Mr. Ted McMeekin: This, if passed, would delete a section in the bill on additional service provisions. Like 16 and 17, the arguments are very similar, so we will oppose this as well.

The Chair (Mr. David Orazietti): Okay. Any further comments?

All in favour of Conservative motion 18? Opposed? The motion is lost.

Shall section 20 carry? Opposed? It's carried.

Section 21: Conservative motion 19. Go ahead, Mr. Clark.

Mr. Steve Clark: I move that subsection 53(1.2) of the Private Career Colleges Act, 2005, as set out in section 21 of the bill, be struck out and the following substituted:

"Same, effective date of revocation

"(1.2) The revocation of an approval is effective on the date, that is no earlier than six months after the date the policy directive is issued under subsection (1), as specified in the policy directive or calculated in accordance with the policy directive."

Again, this was requested in public hearings. It amends the bill to provide that these policy directives take place at six months and that the students in the program that is being revoked have enough time to continue their education.

1500

The Chair (Mr. David Orazietti): Okay, thank you. Mr. McMeekin, do you have a response to that?

Mr. Ted McMeekin: Yes. It's reasonable enough as far as it goes, but unfortunately it doesn't go far enough. The government motion in 20 captures much more significantly a number of cases where the additional provisions that are outlined in 20 would kick in. We intend not to support 19 even though it's reasonable in its intent, because 20 replicates that reasonableness and expands it to better protect students.

The Chair (Mr. David Orazietti): All in favour of Conservative motion number 19? Opposed? The motion is lost.

Number 20, government motion. Mr. Mauro, go ahead.

Mr. Bill Mauro: I move that subsection 53(1.2) of the Private Career Colleges Act, 2005, as set out in section 21 of the bill, be struck out and the following substituted:

"Same, effective date of revocation

"(1.2) The revocation of an approval is effective on the date specified in the policy directive or calculated in accordance with the policy directive that is no earlier than six months after the date the policy directive is issued under subsection (1) or on the date specified in the policy directive or calculated in accordance with the policy directive, if one of the following applies:

"1. The policy directive introduces a new standard related to public health or public safety.

"2. The policy directive revoking the approval relates to a vocational program that is regulated by a third party and,

"i. the third party changes the entry requirements necessary to practise the vocation, and

"ii. the changes are such that unless the private career college adopts the requirements prescribed by the third party, graduates from the program would not meet the entry requirements to practise the vocation."

The Chair (Mr. David Orazietti): Mr. McMeekin?

Mr. Ted McMeekin: Yes. This reflects some of the discussion we had with respect to motion 13 as well. This government motion recognizes that there may well be cases where it would be appropriate to require that a private career college come into compliance with a new program standard within the time period set, and not necessarily six months. It could be shorter than that based on those very specific provisions as outlined by Mr. Mauro when he read this lengthy motion.

Obviously, we're not interested in producing graduates with worthless credentials, and this covers that off so that there would be compliance with new standards where applicable to ensure that a student was not wasting their time and was graduating with some useful sets of skills that are acceptable in the various trades.

Mr. Jim Wilson: Mr. Chair, I was just wondering if the parliamentary assistant has any—have you had any examples in the past where you felt you needed this authority? Secondly, what would a new standard related to public health or public safety be? Can you think of any examples, given that this likely will pass and become part of Bill 43?

Mr. Ted McMeekin: As the honourable member knows, you can't always predict what public health issues may arise or what new standards may need to be put in place as a result of workplace issues or other issues. We just feel this provision is a necessary arrangement to ensure both the quality of education and the consumer protection that students—there are all kinds of instances where students have either misunderstood or been misled about the requirements.

I was in the Beer Store just the other day. I wasn't buying beer, although I do drink beer; I was there for the Returns for Leukemia effort, where the bottles come back and the money is used for research. I guess word got out around Dundas and a student who was registered in a

massage program came over. He's made an appeal for a refund based on a whole series of concerns, some of which relate to health and safety.

The Chair (Mr. David Oraziotti): Any further comment? Seeing none, government motion number 20: All those in favour? Opposed? It's carried.

Shall section 21, as amended, carry? Opposed? It's carried.

Conservative motion number 21.

Mr. Steve Clark: I move that the bill be amended by adding the following section:

"21.1 Section 55 of the bill is amended by adding the following subsection:

"Publication of penalties and fines

"(2.1) The minister shall ensure that the amount of the penalties prescribed under paragraph 25 of subsection (1) and the amount of any fines prescribed in respect of this act under the Provincial Offences Act are publicly available on a website maintained by the ministry and are otherwise reasonably made available to members of the public."

Again, it just provides that this be shown on a ministry website rather than making the poor folks of Ontario have to search through all those statutes to find it.

The Chair (Mr. David Oraziotti): As you, I think, probably are aware, this is also out of order because this section of the act is not open for amendments, so we'll rule this out of order. We're going to move to section 22, through and including—

Mr. Jim Wilson: Excuse me, Mr. Chairman: This one's out of order, but the last website one wasn't?

The Chair (Mr. David Oraziotti): Well, it specifically refers to section 55, which is not open.

Mr. Jim Wilson: Yes. I'll just ask leg counsel, just for the record.

The Chair (Mr. David Oraziotti): Counsel, do you want to comment?

Mr. Albert Nigro: Just briefly: Assuming, Mr. Wilson, that you're referring to the similar amendment

that was proposed for the Post-secondary Education Choice and Excellence Act, the reason why it would be in order there and out of order here is because the section was being added in the Post-secondary Education Choice and Excellence Act, so the section was open within the scope of the bill. In the case of the Private Career Colleges Act, that section was not open and that part of the act was not dealt with in this bill.

Mr. Jim Wilson: I know we have the right to ask for unanimous consent to consider the motion anyway, but—I'll do that. I ask for unanimous consent to consider the motion so Mr. McMeekin can at least put on the record what he wanted—

Mr. Ted McMeekin: Sure. We'll give unanimous consent before we vote against it. Yes.

The Chair (Mr. David Oraziotti): All in favour of Conservative motion—adding a new section here—number 21? All those in favour? Opposed? Okay, the motion is lost. That puts that to bed.

Section 22 through and including section 40, there are no amendments. Shall they carry?

Mr. Jim Wilson: Could we have a recorded vote on that?

Ayes

Chiarelli, Clark, Kular, Levac, Mauro, McMeekin, Wilson.

Interjections.

The Chair (Mr. David Oraziotti): Okay. That's carried.

Shall the title of the bill carry? Opposed? Carried.

Shall Bill 43, as amended, carry? Carried.

Shall I report the bill to the House? Carried.

Thank you. That's it. The committee is adjourned.

The committee adjourned at 1508.

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of Ontario**
Second Session, 39th Parliament



**Assemblée législative
de l'Ontario**
Deuxième session, 39^e législature

Official Report of Debates (Hansard)

Monday 13 September 2010

**Standing Committee on
General Government**

Far North Act, 2010

Journal des débats (Hansard)

Lundi 13 septembre 2010

**Comité permanent des
affaires gouvernementales**

Loi de 2010 sur le Grand Nord

Chair: David Orazietti
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Monday 13 September 2010

Lundi 13 septembre 2010

The committee met at 1402 in room 151.

ELECTION OF ACTING CHAIR

The Clerk of the Committee (Mr. William Short):

Good afternoon, honourable members. It's my duty to call upon you this afternoon to elect an Acting Chair. Are there any nominations? Mr. Arthurs?

Mr. Wayne Arthurs: I would name Mr. Qaadri.**The Clerk of the Committee (Mr. William Short):**

Mr. Qaadri, do you accept the nomination?

Mr. Shafiq Qaadri: I do.**The Clerk of the Committee (Mr. William Short):**

Any further nominations? Mr. Bisson?

Mr. Gilles Bisson: Randy Hillier.**The Clerk of the Committee (Mr. William Short):**

Mr. Hillier, do you accept the nomination?

Mr. Randy Hillier: Absolutely.**The Clerk of the Committee (Mr. William Short):**

Further nominations? There being none, I declare nominations closed.

I will deal with the nominations in order. All those in favour of Mr. Qaadri being Acting Chair? Mr. Qaadri, getting the majority of the votes of the committee, is elected Acting Chair.

Interjections.

The Acting Chair (Mr. Shafiq Qaadri): Thank you, colleagues, for the confidence you've bestowed upon me. I would invite, if there are any further nominations or procedures—Mr. Arthurs?

Mr. Wayne Arthurs: Mr. Acting Chair, I'm going to move that, in the absence of the Acting Chair, Mr. Delaney do act as the Chair.

The Acting Chair (Mr. Shafiq Qaadri): Are there any comments or questions before we accept that nomination? Accepted. Thank you.

SUBCOMMITTEE REPORT

The Acting Chair (Mr. Shafiq Qaadri): I think we'll proceed to our subcommittee report. May I have it first entered into the record, please? Mr. Levac.

Mr. Dave Levac: Your subcommittee met on Thursday, June 3, and Wednesday, June 9, 2010, to consider the method of proceeding on Bill 191, An Act with respect to land use planning and protection in the Far North, and recommends the following:

(1) That, as per the order of the House, the committee meet for up to four days the week of June 14, 2010, in Slate Falls, Sandy Lake, Webequie, Moosonee and Attawapiskat for the purpose of holding public hearings.

(2) That the committee clerk, with the authorization of the Chair, post information regarding public hearings on the Legislative Assembly website, Wawatay Online and with Wawatay Radio.

(3) That in order to facilitate the planning of committee travel, each location would initially be scheduled for three hours of public hearings.

(4) That interested parties who wish to be considered to make an oral presentation contact the committee clerk by 5 p.m. on Friday, June 11, 2010.

(5) That groups and individuals be offered up to 20 minutes for their presentation. This timing is subject to change depending on the number of requests to appear.

(6) That late requests to appear be accepted for any location provided there are spaces available.

(7) That the deadline for written submissions be 5 p.m. on Friday, September 3, 2010.

(8) That the research officer provide the committee with a summary of presentations.

(9) That the committee clerk, in consultation with the Chair, be authorized prior to the adoption of the report of the subcommittee to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

(10) That, as a result of NAN resolution 10/36, the Standing Committee on General Government not hold public hearings the week of June 14, 2010, in Slate Falls, Sandy Lake, Webequie, Moosonee and Attasapiskwat—Attasapiswa—

Mr. Gilles Bisson: Attawapiskat.

Mr. Dave Levac: —Attawapiskat. I said that three times; my apologies.

(11) That the committee clerk cancel all preliminary arrangements authorized by the subcommittee report dated June 3, 2010.

That's your subcommittee report by your subcommittee, Mr. Chairman.

The Acting Chair (Mr. Shafiq Qaadri): Thank you, Mr. Levac. I'll open the floor for any comments or questions. Monsieur Bisson?

Mr. Gilles Bisson: First of all, I want to start off by thanking the minister for being here today. We understand the circumstances, and our thoughts go to Mr.

Oraziotti. That is never a good time in anyone's life, so I want you to pass on to him our condolences.

First of all, I just want to say that I thank the minister for being here. I think it's important that she is here to hear what we have to say throughout this particular process because, as members will know, we never did get a chance to go out and do the consultation that needed to be done and should have happened over the summer months. The government, by time allocation motion, shortened the time that we needed to go out and actually do the hearings. We were given about two weeks to get organized, and First Nations—because you had school graduations going on, because you still have the hunt going on, because people just had things in their lives going on—were not able to pull together committee hearings in such a short time, in two weeks of time.

We had suggested that the government step back and say, "All right, let's go to Nishnawbe Aski Nation. Let's say to them, 'This is an act that's going to affect you, so therefore, when do you want us to go and where do you want us to go?' and not limit ourselves to time or places, based on a true consultation." The government didn't do that. As a result, we have not had the consultation.

I just want for the record to say a couple of things right here at the beginning. One is, the minister has stated in the House and has stated in scrums that First Nations support this particular act. I want to tell you, unequivocally, that is not the case. The minister thinks what she does, and hopefully by the end of this process we will have convinced her, but it is pretty clear when we look at who's here from places like Sandy Lake, Moose Factory, Slate Falls—you name it; we have representatives from across Nishnawbe Aski who are here with us today who have said by resolutions at their band councils, by community meetings that they've had in their communities, that their communities, in the entirety of the Nishnawbe Aski Nation, oppose this legislation.

I want to make it very clear, Minister: They want land use planning. The communities, as you well know, want to get on with the business of developing what should be a planning regime when it comes to what needs to be done in the Far North territories. But it has to be done with the consent of the First Nations, and there lies the rub: This particular act is being put forward in a way that does not meet with the approval of the First Nations. It misses on a number of points, which I'll get into later. I want to make it very clear that they are not in favour.

1410

I thought it was interesting today, in the question that I put in the House, that the minister said that she travelled to some eight communities in the north, had some discussions with First Nations communities in regard to the Far North planning act and took that as consultation. I want to be really clear: That's not consultation, with all due respect to the minister. I respect the minister. I know that you're trying to do the right thing. This is not meant as a personal thing toward you, please understand me. But from the perspective of First Nations, consultation is getting in touch with the leadership and saying, "We

want to have a discussion," and then setting out the framework of what needs to be discussed, the items to be discussed, and when we're going to do it and how often we're going to do it.

Let me give you an example. Moose Cree First Nation, in consultation with Ontario Power Generation, have inked a deal worth \$2.7 billion on an IBA, an impact benefit agreement, to allow the redevelopment of the Mattagami River basin to be done—\$2.7 billion; you got the numbers right. The First Nation had consultations with OPG, but that wasn't one meeting. It wasn't the Minister of Energy all of a sudden dropping in on the community and saying, "How's it going? By the way, I've got \$2.7 billion" and leaving. There were I don't know how many meetings, but there had to have been at least 10 or 12 meetings that I know of, where people from the community of Moose Factory and people who were off-reserve folks, who lived in Timmins and different places, had an opportunity to have their say about what would be the basis of an IBA. At the end of that consultation, the community had a vote, and by a majority vote—it took two attempts, if I remember correctly; I think it was 85%—voted to approve the IBA with Ontario Power Generation.

That's consultation. It's consultation when the government or the company sits with the First Nations, establishes what it is that they're going to talk about, what it is they want to accomplish, how often they are going to meet and what is going to be the process for the acceptance of whatever is being proposed. That has not been done in this case.

In fact, I had a chance to speak to some of the leadership in regard to the comments you made in the House today, and it was pretty clear—I wish I had known this during the question in question period, because my supplementary would have been different. You said that you had an opportunity to go to Sandy Lake and Neskantaga in order to consult. Adam Fiddler, the chief of Sandy Lake, is here. Roy Moonias, the chief of Neskantaga—please help me with the pronunciation; I'm doing it wrong. Both chiefs are very clear that in no way, shape or form was there any agreement by them, their band councils or the community to support Bill 191. In fact, they left you very clearly understanding that in fact there was not an agreement on Bill 191 as inked.

Is there a willingness to talk about land use planning? You bet, Minister. They're prepared to do it. They'll do it today. If you want to sit down and you want to start going through a process where First Nations are able to discuss with the province, the crown, the ability to develop land use planning, they are prepared to do it.

Are they in favour of development? Absolutely—\$2.7 billion with OPG; over a billion dollars with De Beers; the Detour Lake gold mine, \$1.3 billion. First Nations understand that economic development is crucial to them. But there needs to be a planning regime that meets with their approval, that protects their inherent right to be able to determine what happens on their territory—that's the key issue; number two, that their values be safeguarded

when it comes to how development will or will not happen, in some cases, and when development does happen, how we are going to protect those lands so that those lands are minimally affected when it comes to what the impact on the environment is going to be.

I just want to say to the minister up front and make it very clear: First Nations do not agree with Bill 191. They are here today to say to you, Minister, that you may not have had an opportunity to send the committee there because of the truncated committee process that we had, but in no way, shape or form did the Nishnawbe Aski Nation in any way—the tribal councils or individual communities—support this particular legislation. In fact, they're asking you to withdraw this legislation.

With that, I'd like to move a motion when we have an opportunity.

The Acting Chair (Mr. Shafiq Qaadri): Thank you for your comments.

The floor is open if there are any further comments on the subcommittee report. Mr. Hillier?

Mr. Randy Hillier: I was involved with these subcommittee reports as well. I have to say that I have never seen such an abject failure and contempt for the First Nations communities as when this government arbitrarily said, "We will meet with you on this day at this time and we will not give you any latitude or any opportunity to change anything in this schedule." This was just a complete disregard for everybody. We hear the words that this government is opening up a new relationship and being open and transparent, and they want to be partners with the First Nations—and this is what they do. They bring in a time allocation motion which arbitrarily says, "We don't care what your concerns are, First Nations. We don't care what other activities you're doing. We're going to hold these meetings on these particulars days." They constructed it and set up this time allocation motion, in my view, that there would be no other choice, no other option—there would not be public consultations on Bill 191.

The Liberals have seen the opposition to Bill 191. The First Nations communities are here. They've passed a multitude of resolutions opposing Bill 191 in its current form. They know that they've not been consulted, and indeed everybody in the north—the northern mayors have said the same thing; industry has said the same thing. I'll reiterate: There was no consultation on Bill 191 before it was introduced.

I go back to the committee hearings that we had on the Mining Act, when I asked each and every individual who came before the committee if this government had consulted with them before introducing Bill 191. Not one person from the north had been consulted. There was only individual who said that they had been consulted by this Liberal government and that was Monte Hummel, chairman of the World Wildlife Fund. That is totally contrary and contemptible of democracy where this government is looking for a southern decision for the north, disregarding everybody else who lives in the north but seeking out the approval of Monte Hummel of the World Wildlife Fund.

Everybody in the north knows that Bill 191, the way it is constructed, provides this government with the decision-making that goes on up there. They understand that, arbitrarily, a quarter-million square kilometres of northern land will be excluded from any activity. There will be no natives allowed there. There will be no anybody allowed there. There will be no transmission corridors. There will be no roads. There will be no mining. It's protected and excluded from anybody in the north from doing anything there.

On June 3 we asked this Liberal government to provide some accommodation. We sought unanimous consent that there be some accommodation provided so that the time allocation motion could be amended so that we could have public consultations in the north at a convenient, practical and appropriate time for the communities and the people in the north. This government said no. That's all we were asking for, just some latitude that we could reschedule and have consultations that fit in with the schedule of people in the north. Is that an open relationship when you arbitrarily say, "No, we're not giving you any latitude. We're not giving you any opportunity. It's my way or the highway"? That's what you told them on June 3 and you said it again today when we asked for unanimous consent once more that we have actual consultations in the north, and your government chose not to provide any latitude, no opportunity for the First Nations in northern Ontario to be part and parcel of the legislation that affects them.

You're ramming this through, and one can only assume what the motivator is here, why this Liberal government is disregarding the interests of the north and only accepting the input and the influence of the World Wildlife Fund and people like that.

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I guess there's one thing that the Liberals have learned over the last seven years, that there are more votes in southern Ontario than there are in northern Ontario, with the way they're ramming this bill through this committee and through this House.

The Acting Chair (Mr. Shafiq Qaadri): Thank you for your comments.

Are there any further comments before I offer the floor to Mr. Bisson? Mr. Bisson.

Mr. Gilles Bisson: I have to pick up on something Mr. Hillier said. I think the environmental movement has a lot to say on this particular issue, and I think we should value what's being said. What you had to say in regard to the environmental movement might be a little bit harsh, because I think they've tried to find ways of reaching out to First Nations in order to deal with some of these issues.

I do understand what you're saying, however, as a northerner. There really is a sense in northern Ontario—and this is not directed toward environmental movements—that decisions are being made at Queen's Park that, quite frankly, leave us far behind with little say about what the final decision will be. If you're living in the Far North, my God, it's even worse because there is

no ability to go down to the local MNR office, no ability to go to the local MNDM office or even to see your provincial or federal members of Parliament on a regular basis. You're in landlocked communities that are accessible only by air, and there's really a sense of isolation.

That's why, when I made the comment earlier, Minister, in regard to consultation, what I really tried to stress is that consultation in my context as a person living in Timmins is very different than consultation in the context of somebody who's living in the Far North, because of not just the geography but, more importantly, the culture.

I just want to say, again, I want you to be very clear in understanding that there is not a First Nation in the NAN territory that supports this legislation as amended. I also want to make it clear that they are prepared to sit down and go through a process that gets us to where we need to be. At the end of the day, I think we all want the same thing. I think the minister, the Premier and the First Nations, myself and others want to have some certainty around the issue of development in the Far North, and we want to make sure that whatever development happens happens in a way that is consistent with the protection of the environment. I don't think any of us disagree on that point. If there's agreement on the basic point of that, what, then, is holding us up in getting to the issue of really developing a land use planning regime that works for First Nations?

I'm beginning more and more to think that the government doesn't want to get into a discussion about treaties. I really think that's what this is all about. At the end of the day, it is the understanding of First Nations—and I'll tell you, it's a bit of a study, because like you, I've read Treaty 9, I've read Treaty 3 and others; I begin to understand it on the periphery. I don't pretend to be an expert in any way, shape or form. But my understanding of reading treaty, and from not only speaking to elders but speaking to the leadership, is that there was never a sense by those who signed that they gave up title to the land.

That's the problem with this bill. Many people in the Far North say, "Listen, if we allow 191 to go forward as is, this is the biggest thing to hit us since the treaty." If we allow this thing to go forward, it goes contrary to what was agreed to by what was said by the treaty commissioners to those people who were negotiating the treaty on the part of First Nations. They were clearly told that they were not giving up title to the land; that, in fact, the European settlers would share the land with First Nations and that First Nations would benefit from the sharing of that land. So in exchange for allowing mining, forestry and hydro development to happen in those territories, or whatever the activity would be—there would be permission on the part of First Nations, but there would be a quid pro quo: There would be jobs for First Nations members; there would be economic opportunity; there would be a sharing of the benefits of what the land has to offer.

The way that people read this act, at the end of the day, the crown asserts predominance as to who controls

the land. The fundamental issue that I think the provincial government has to get their heads around is that First Nations don't accept that they've ever ceded the land in the first place. If you talk to any leader, talk to any of their legal people, talk to the elders, they'll pretty well tell you the same thing in many different ways, that the basic thing is that the land was never ceded.

There was a point made the other day at the conference in Timmins—and I hope you heard it a second time—by counsel from Mushkegowuk Tribal Council, Murray Klippenstein. He talked about the treaty commissioners and what they had to say by way of their diaries, what they wrote down in the diaries when it came to what was said to the First Nations. What was clearly said was the first point which I made: "You're not giving up title on land. This is about sharing, and you'll benefit from the land, but you would continue to have the right to hunt whenever and wherever you choose to hunt, which means to say that no water development, no mining activity, no forestry activity or any other economic activity could impede on your right to utilize your territory." In the context of the day, the main use of the land was hunting and trapping. So they were told that they would never be interfered with when it came to their ability to benefit from being able to provide for themselves and also have economic activity on the land in any way, shape or form.

I guess part of the issue that I think this government has to get into a conversation with the First Nations about is, take a step back. Say, "All right; 191 we put in abeyance for now." I realize we're under a time allocation motion here, and I'm going to propose something later that might be a way for us to get out of this. The province says, "Okay, we're going to put this aside for now and we're going to go back and we're going to have a basic conversation with First Nations as to the scope of the conversation we're really having when it comes to land use planning."

I can tell you that First Nations are going to welcome that, because they want land use planning, they want development and they want to protect the environment that they live in, not only for themselves today but for their grandchildren in the future. But the basic tenet is, who in the end has paramountcy over the decisions of what happens in the land? That issue has to be resolved before you ever get into land use planning.

I know what side I fall on. I would hope that the minister falls on the same side, because as I said at the beginning, I don't believe that Linda Jeffrey, MPP for—

Hon. Linda Jeffrey: Brampton–Springdale.

Mr. Gilles Bisson: Brampton–Springdale. That's it? Okay. At one time it was a longer title.

I think that you're an honourable person and you want to do the right thing. I think the problem is, I don't understand issues in southern Ontario as fully as I need to because I don't live it every day. I think you need to understand some of the issues that I've come to understand, but more importantly, issues that the First Nations live with every day, so that we understand how we can

move forward with something at the end that's actually going to work.

You know what? It's about protecting the environment; it's about protecting the ability for First Nations to find an economy that works for them, and, probably as important, I think it's all about, at the same time—I had a third point. Don't you hate that when the third point disappears? It's about the ability for them to have a say about what happens on their own territories.

With that, Mr. Chair, I'm going to suggest that a motion, worded along the lines of—that doesn't go contrary to the time allocation motion, if you can give me a little help here—that says that the committee will deal with the business that's before this committee today, but that there's a direction by this committee to go back to the government House leader and the various House leaders and whips in order to find a way to put this whole process on hold so that in fact the government can do what it is that it wants to do at the end, and that is to create what I said earlier: a protection of the land, an ability for economic opportunity and a certainty of what the rules are when it comes to development.

I'm just wondering, Mr. Clerk, if you can help me come up with wording that would allow this committee to do what it is that I'm asking, which is, simply put, that the committee actually deal with the clause-by-clause motions that we have before us, because we are ordered by time allocation to do so—I understand the rules; I can't get around them—but that this committee direct, once we pass the motion, communications with the government House leader and the opposition House leaders in order to try to find a way to put this whole thing into abeyance until such time that we can do what needs to be done to satisfy everybody's interests in this particular debate.

The Acting Chair (Mr. Shafiq Qaadri): Thank you, Monsieur Bisson. Procedurally, I would invite you to make an amendment to the subcommittee report, encapsulating those issues. You have the floor to do that now.

Mr. Gilles Bisson: Can I ask for maybe a five-minute recess with the clerk so that I can actually put something together?

The Acting Chair (Mr. Shafiq Qaadri): Is it the will of the committee—a five-minute recess?

Hon. Linda Jeffrey: If you need more time, why don't you give yourself 10 or 15?

Mr. Gilles Bisson: Yeah, 10 or 15 minutes?

The Acting Chair (Mr. Shafiq Qaadri): Which?

Mr. Gilles Bisson: Give me 15 minutes in order to work something out with the clerk.

The Acting Chair (Mr. Shafiq Qaadri): The will of the committee? A 15-minute recess.

The committee recessed from 1430 to 1450.

The Acting Chair (Mr. Shafiq Qaadri): Thank you, members of the committee, for your indulgence. I believe we're ready to reconvene and I open the floor for comments and further process. Monsieur Bisson.

Mr. Gilles Bisson: Before I move the motion, I just want to say up front that this is my attempt, along with the attempt of the official opposition, to give the government an opportunity to go back and deal with this in some sort of way that will achieve what it is that we're trying to do. In no way, shape or form do I want anybody to think that what I'm about to put forward is something that puts the position of Nishnawbe Aski Nation on paper. This is me, Gilles Bisson, New Democrat, Timmins–James Bay, putting this forward.

I'm going to propose the following under number 12 of the subcommittee report: "That the committee send correspondence to the House leaders requesting that Bill 191, the Far North Act, 2010, not be called for third reading until such time as a process of consultation and consent has been agreed to by First Nation communities and the government."

The Acting Chair (Mr. Shafiq Qaadri): Thank you, Mr. Bisson. Do I have any further comments or proposals for deferral? Minister Jeffrey.

Hon. Linda Jeffrey: Mr. Chair—and I realize Mr. Bisson is honestly trying to find a reasonable resolution to the issues raised by the First Nations chiefs who are with us today—I'm asking whether we could defer this decision to Wednesday's debate. I mean, most of us have just been handed this motion now. We'd really like to have at least 24 hours to look at it and to decide whether this side will be supporting the motion. I don't want to dash it right now, so I'm asking if we could defer it and go through clause-by-clause, and then by Wednesday we could have a conversation about it again.

The Acting Chair (Mr. Shafiq Qaadri): Understood. So for the benefit of the committee members, the proposal is that we continue right now with clause-by-clause, as stated by the time allocation motion, and defer consideration of the entire subcommittee report, which includes Monsieur Bisson's proposals, to end of day Wednesday. Is that the will of the committee? Yes, Mr. Bisson.

Mr. Gilles Bisson: For the record, I just want to say to the minister, I appreciate your offer to try to find some mechanism to deal with this, and I'll take it in good faith that in fact you will go back and have these discussions with folks on your side in order to try to deal with this in some way. But again, I want to make very clear that this is a proposal that's put forward by me. It doesn't reflect the position of NAN as far as their agreement to the language; this is me, a legislator, trying to get something to happen. It will then be up to the crown to work out with the First Nations whatever it is that's to happen after this. I would at that point allow you to do your job.

The Acting Chair (Mr. Shafiq Qaadri): Thank you. Are there any further comments on this issue of deferral of the subcommittee report before we entertain—Mr. Arthurs.

Mr. Wayne Arthurs: Just one: Does this in any way frustrate the activities of the committee to carry out its work, in the absence of a subcommittee report having been adopted? I guess the option is to defer this particular

amendment, not defer the entire report. I just want to be sure we're not frustrating the work of the committee.

Mr. Gilles Bisson: Maybe the Chair wants to rule. You have to deal with the entirety of the report; that's the problem.

The Acting Chair (Mr. Shafiq Qaadri): I would ask for guidance.

Interjections.

The Acting Chair (Mr. Shafiq Qaadri): In order to find out the divisibility of the subcommittee report, the whole report plus the end addition, Monsieur Bisson's proposed amendment, the clerk and powers that be are asking for a five-minute recess. Is that the will of the committee?

You have your five minutes.

The committee recessed from 1454 to 1458.

The Acting Chair (Mr. Shafiq Qaadri): Thank you, colleagues, for your continued indulgence and patience. I have been informed that it is procedurally better to defer the entire subcommittee report, so I will assume that's the will of the committee, and the end-point divisibility will no longer apply. Is it the will of the committee that the subcommittee report be deferred until Wednesday? Mr. Hillier.

Mr. Randy Hillier: I'd just like to add one comment here. I think it's very positive that we see some goodwill demonstrated today. I think it's exceptionally important that the government really sees that there is—all parties are concerned about Bill 191 and about the process. I can't stress enough that deferring this subcommittee report really is looking for that last point to be accepted by the House leaders. I would encourage members on the government side to use their influence—

Mr. Dave Levac: Take yes for an answer, Randy. Take yes for an answer.

The Acting Chair (Mr. Shafiq Qaadri): Thank you. Any further comments? May I then take it that it's the will of the committee that the subcommittee report is deferred until Wednesday? Agreed.

FAR NORTH ACT, 2010

LOI DE 2010 SUR LE GRAND NORD

Consideration of Bill 191, An Act with respect to land use planning and protection in the Far North / Projet de loi 191, Loi relative à l'aménagement et à la protection du Grand Nord.

The Acting Chair (Mr. Shafiq Qaadri): We'll now move to the consideration of the bill. I'll open the floor first now for general comments. Are there general comments on the bill? Monsieur Bisson.

Mr. Gilles Bisson: For the record, now that we're actually into the clause-by-clause, I want to say a couple of things up front. Just so the government knows—I know you're going to be disappointed—I'm going to vote against every one of your amendments, even though some of these amendments, quite frankly, I could support. I'm going to tell you up front that the reason I

want to vote against all of these amendments is pretty clear: that there is, at this point, a direction on the part of all First Nations that are affected by this bill that they are opposed to this legislation. As such, I'm going to be voting against all amendments—good, bad or indifferent—on the prospect that this bill cannot go forward in the way that it is now. Let's see where we end up with the process that we're about to get into. Maybe the minister is able to find some way to climb this thing down so that we can get to some sort of process at the end that meets with the approval of First Nations and the government.

This is the opportunity that we get to talk about the bill in its entirety, and I want you to know, Chair, that I'm not going to be doing a filibuster, but there are a couple of things that I want to go through. The first thing I want to say is—and I said this in the debate at second reading—for somebody to understand where First Nations people are coming from, you need to understand it goes through the land. Everything that is anything about First Nations people and how they've lived their daily lives for millennia and how they will do so for many years to come all has to do with the land. I've got to tell you, as somebody who comes from northern Ontario and who recently started representing larger First Nations in 1999 when there was redistribution, I thought I understood that. But it has been made very clear to me over the years, from talking to friends, various community members, leaders and elders, that you really have to understand that first point: Everything that has anything to do with First Nations goes through the land. The whole idea of being able to live comes from the land. There weren't grocery stores 200 years ago. It was the ability to hunt and gather that allowed First Nations to survive for millennia and, quite frankly, have quite a good economy.

To that point, there was an economy. This is the other thing I've learnt over the years. There was an economy that flourished in North America for years and years before the Europeans ever came, and that economy was one of gathering and one of being able to sustain themselves when it came to not only being able to survive on a daily basis but to trade with other nations and other communities nearby. The whole concept of gathering every year to be able to trade goods is something that has been going on for millennia on this land by First Nations, and it was their form of an economy.

So you need to understand from the very beginning—and some of you might find this repetitious because you've heard me say this before. But for the record and for those of you who've not had the opportunity to hear this argument, once you look at this bill, Bill 191, once you look at treaty or you look at anything that comes out of treaty or the Indian Act, from the perspective of the First Nations everything has to do with what the land is about: the ability to hunt and to gather and to be able to do so without restriction. I don't mean to holus-bolus go out and bag as many caribou as you can and take as many fish as you want—because they have their own limits, in

understanding what the land is able to sustain, when it comes to gathering and harvesting of various food items they take out of the environment.

My point is this: If you understand that land is paramount to everything else that is the identity of the Mushkegowuk and the Mattawa and various other people out there, it then allows you to get to the next point, which is if it is the land, that is why 191 has hit such a chord with First Nations, because this bill goes to the very essence of what and who First Nations are and how they see themselves when it comes to the land.

I said earlier that when the Europeans came to both Ontario and Canada and negotiated a treaty with the First Nations people at the turn of the previous century, it was very well understood that the concept was the Europeans wanted to be able to access the land, wanted to do things such as mining, forestry and other activities that would derive economic activity from the land and create wealth, but First Nations understood that that development would be done in such a way that didn't take away their right to the territory, their governance of the territory, their control of what happened on their own land. In other words, in the view of First Nations—and that is really clear from everybody I've talked to—never was there a concept of ceding the territory to the crown. It was always, "The land is to be shared." Unfortunately what ensued for the past number of years is treaty was signed and we, the Europeans, went out and did our part, which was to get the benefit from the land, and for their part they got very little.

We didn't have homes in many of the communities that we have today until the 1950s. We signed treaty, what, in 1906?

Hon. Linda Jeffrey: In 1905.

Mr. Gilles Bisson: In 1905. Thank you, Minister. That's why you're here. You're the boss. You're the boss of the beavers, I understand. That's the translation in Cree. It might be muskrat, but that's a whole other issue.

Hon. Linda Jeffrey: No, it's beaver.

Mr. Gilles Bisson: It's beaver? It is beaver, okay. We'll get to that one later.

My point is that it was understood that at the end there was no ceding of the land, and 191 is seen by First Nations as the crown trying to do by way of this act what they tried to do and didn't do by way of treaty. So you really need to understand that point.

Now, does it mean to say—and this I want to say to my detractors. I've got people across Ontario, as you do, Minister, who would see this kind of talk in committee and say, "Well, what are you saying? We can't do development in the Far North?" Absolutely not. There is hardly a First Nations leader, there is hardly a First Nations member who is opposed to development of some type in order to bring them economic opportunity. All they're saying is, under the principle that they still control the land, and under the principle that development happens with the values and with the interests of First Nations put in legislation somehow—so for that to

happen, there needs to be some kind of process where we develop legislation that makes that happen.

What's the proof that development should happen? I look at Moose Cree, which is one of the communities in my riding. An IBA with Ontario Power Generation—is it \$1.7 billion, is it \$1.3 billion or—

Interjection.

Mr. Gilles Bisson: It's \$2.7 billion to develop the Lower Mattagami, signed by the First Nations by way of consultation, by way of ratification by the First Nations community. There's a deal with De Beers Canada on the part of Kashechewan, Fort Albany, Attawapiskat, and Moose Cree, where they have negotiated IBAs with De Beers in order to allow a \$1.2-billion project that is now in production.

I'll tell you, it wasn't easy. Attawapiskat probably took about seven or eight years by the time they negotiated an IBA. I know it was part of the process that took so long. I never thought it was going to happen, but there was a genuine will on the part of those communities to allow that to happen, because they understand that there needs to be development if their communities are to prosper and get the same opportunities as we do. But all of this has to be done within the context that not only are they able to derive benefit from those projects, but that also their values and the environment are protected. That's the other part of this whole thing.

So I want to say to those who may be my detractors that when I say we need to accept the principle that First Nations have never given up title to the territory known as the Far North, and that in fact they have to have an absolute say of what goes on there, it doesn't equate to there being no development. Because, I'll tell you, there will be development.

To the government's initial point on 191, they were saying that this is all about protecting the land. Listen, for millennia, First Nations have protected that territory. They still can get tonnes of fish out of the Fort Albany, Winisk, Attawapiskat and other rivers. They're still there. Why? Because First Nations have never overfished them. First Nations have always understood that it's a finite resource: You only take what you need; you don't take out what you don't need.

I fly an airplane, as a number of you know, as Mr. Shurman does in the Conservative caucus and Madame Gélinas does in our caucus. You go flying over the Mushkegowuk territory, you'll see caribou. You don't see one or two of them; you see herds of caribou. Why? Because for millennia, the Mushkegowuk people have been hunting caribou, but, again, they don't over-harvest. They understand. The other issue is that the land itself cannot be left in such a way that the land would be harmed in any way for future generations.

I just want to end on this point. All that First Nations are asking is that when we go forward with the land use planning process, in whatever bill we want to call it—Bill 191 or whatever it might be in the future—we do so with a clear understanding that First Nations have never ceded territory to Ontario or Canada when it comes to

their ability to decide what has to be done, that that does not mean that there cannot be an agreement as to what land use planning should look like and that it doesn't mean that no development would ever happen again. It doesn't mean that the environment has to be damaged in order to allow that development to happen.

In a manner consistent with good rules and good practices, I think the environment could be well taken care of. In fact, we can protect far more than 50% of the territory if we decide to put our minds to it and we do it right. We learn from those mistakes of the past, where the Kamiskotia mines of this world don't exist and can't happen again. We understand that you cannot go in and over-harvest a forest or dam a river to the point of changing the silting and various activities that naturally happen within a river, that it be done in a manner that's consistent with best practices so that we protect the land.

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I just want to say to those members that when it comes to this bill, please understand that the opposition of First Nations is not to the concept but to the process by which we get to what we all want to do, and that is to allow development to happen in such a way that's consistent with good principles that protect the environment, that respect the values of First Nations, and that allow people to benefit from the very territory that they reside on.

The Acting Chair (Mr. Shafiq Qaadri): Thank you, Mr. Bisson. Before we move to clause-by-clause consideration, Mr. Hillier.

Mr. Randy Hillier: I'd like to say that I'm not opposed to planning in the north, and I do believe there's a role for Queen's Park to be involved with planning in the north, but I would like to see the planning of the north be involved with planning for good governance, for good administration, for a good relationship with First Nations. But that's not what this bill is all about. This bill is about planning for the land in the north and not for planning for a good relationship, good administration and good governance. That really is why there is so much opposition. Here we see Queen's Park trying to impose a preconceived notion, a preconceived plan, arbitrarily on people in the north. If we had taken some time and thought about planning for a good relationship, planning for good administration, this problem wouldn't have developed.

People in the north don't need Queen's Park to be the arbiter of what happens on the land in the north. That's not what they need from Queen's Park. I'm sure everyone in the north understands that, and I'm sure most people in this committee understand that there are people who are better suited to determining what happens in the north than those who are sitting here today in this committee and those who sit in the Legislative Assembly. That's my take on planning for the north.

I also have to say that we've heard this talk so often about, "We must protect the land." I'm just wondering, who are we protecting it from? What are we protecting? The land is not going to go away. The land is going to stay there. Who are we protecting it from with Bill 191? Who do you want to protect this land? What do you want

to actually achieve with this protecting of the land? I'm confused as to who you want to protect it from.

I know the people who live in northern Ontario can take care of the land. If anything, if I was living up north, I'd want to protect the north from us, not from the people who live there. That's what I think we should be looking at very significantly.

I will just say that, hopefully, we've gone past a little bit of what has happened with this time allocation motion on Bill 191. We still recognize, though, that all these government amendments are going to be passed. The consultation, the discussion here in this committee, will be worthless and meaningless because they're all going to be deemed passed. I think that's a disservice to the people in northern Ontario. I think it's a disservice to everybody in Ontario.

Like my colleague from the third party, we will be opposing all government amendments. It really is nothing but a mockery of democracy and a mockery of actually having a concern in the interest of the people of northern Ontario.

The Acting Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier, for your comments. Are there any further general comments before we move to individual clause-by-clause consideration? Mr. Arthurs.

Mr. Wayne Arthurs: Very briefly, just two things: One, I think it's already been acknowledged that the minister is here today for clause-by-clause, and I'm anxious, of course, to get into that, because I'm anxious, obviously, for her to have an opportunity to speak to some of the government amendments that are being brought forward.

Mr. Bisson has referenced that there are amendments, some of which you don't agree with, some of which you may agree with but you won't be voting for—and I appreciate the comment. I'm hoping, though, that during the dialogue, the debate that goes on, you will take the opportunity to express your opinions on the amendments, both pro and con, even knowing that your decision on those amendments will be in the negative. I think that will be beneficial to us, beneficial to this process, particularly as someone who represents a northern Ontario riding and is as familiar with First Nations as anyone in the Legislature.

The Acting Chair (Mr. Shafiq Qaadri): We'll move to clause-by-clause. Government motion 1, Minister Jeffrey.

Hon. Linda Jeffrey: I move that section 1 of the bill be struck out and the following substituted:

"Purpose of the act

"1. The purpose of this act is to provide for community-based land use planning in the Far North that,

"(a) sets out a joint planning process between the First Nations and Ontario;

"(b) supports the environmental, social and economic objectives for land use planning for the peoples of Ontario that are set out in section 6; and

"(c) is done in a manner that is consistent with the recognition and affirmation of existing aboriginal and

treaty rights in section 35 of the Constitution Act, 1982, including the duty to consult.”

On several occasions, NAN has written to the province, asking that Bill 191, the Far North Act, protect and support aboriginal and treaty rights. Most recently, on August 9, 2010, Grand Chief Stan Beardy wrote to the Premier asking that Bill 191 support aboriginal and treaty rights.

We are tabling this motion in response to what we’ve heard. With this amendment, the purpose statement would provide that land use planning in the Far North will be done in a manner that is consistent with existing aboriginal and treaty rights in section 35 of the Constitution. The Mining Act is the only other piece of Ontario legislation that does this.

I’ve personally heard concerns from First Nations that Bill 191 will impact aboriginal and treaty rights. These existing rights are recognized and affirmed in the Constitution, and the province must meet its obligations under the Constitution. Bill 191 cannot and will not change this. We can make this point very clear by speaking to these existing rights in the purpose statement of the bill.

Mr. Gilles Bisson: Could you repeat the last part you just read, Madam Minister?

Hon. Linda Jeffrey: The last sentence?

Mr. Gilles Bisson: No, the last paragraph. I missed something, I’m sure.

Hon. Linda Jeffrey: I’ve heard from First Nations that they feel that that Bill 191 will impact their treaty rights. These existing rights are recognized and affirmed in the Constitution, and the province must meet its obligations under the Constitution. Bill 191 can and will not change this.

Mr. Gilles Bisson: I though you were saying the inverse, that’s why.

Hon. Linda Jeffrey: No.

Mr. Gilles Bisson: My bells were going off there. Okay.

Hon. Linda Jeffrey: On the issue of joint planning: Earlier this month, in a radio interview, the grand chiefs said that they want a mechanism to jointly make decisions on what happens in the Far North. We agree. Bill 191 is a mechanism that would allow for joint land use planning. To make this point abundantly clear, we are tabling a motion that would directly reference a joint planning process between First Nations and Ontario in the purpose statement of the bill. We are also working to provide First Nations with the funding to participate in the joint process. All communities in the Far North who want to do land use planning have received funding, and this past week we committed an additional \$10 million to communities working on planning with Ontario.

If this bill is passed, it would be the first time in Ontario’s history when legislation would require First Nations’ approval on land use plans. This is a significant change to the current approach in the Far North and represents a step forward in our relationship with First Nations.

The Acting Chair (Mr. Shafiq Qaadri): Are there any further comments?

Mr. Gilles Bisson: Well, is this a step in the right direction? I think it is, to be blunt. Does it really address the concerns first raised by not only NAN but NAN communities and others? I think not, and I’ll explain why in a minute. Does it deal with the essential issue of protection? I think not, and let me explain why.

The original purpose clause spoke strictly to the social and economic objectives of land use planning, blah, blah, blah. It didn’t entrench in there, as the minister said quite correctly, the concept that First Nations are in the driver’s seat.

But here lies the problem: As I read the amendment, it says “sets out a joint planning process between the First Nations and Ontario.” “Joint” is the keyword. What does that mean? Does that mean to say that at the end of the day the minister will have the final authority?

1520

As I read—this is where we’re going to get into the bill a little bit later—the amendments that have been put forward by the government, you have a joint planning process that says, “Yes, the community approves the land use plan, but at the end of the day so does the minister.” It sounds to me that, at the end of the day, the minister has the authority in that scenario. What you’re essentially saying in (a) is “sets out a joint planning process between the First Nations and Ontario.” I think that has to be fleshed out in the sense of what are we really talking about. Do we agree with the principle that, at the end of the day, they have the right to determine their own land use plans such as municipalities have—and I’ll come back to that. Actually, let me deal with that right away.

Currently, a municipality in Ontario has a right to develop its own land use plan if they don’t have one, and if they were a new municipality, to develop a new one, and if they want to amend one, they can amend one. The point is that they go, yes, to the end, and they go to the crown in order to be able to deal with the approval of the land use plan. The difference is, it’s the province that created the municipalities. In the instance of First Nations, it wasn’t the province that created reserves; it wasn’t the province that created the territories which First Nations see as their lands. They were there millennia before we ever came around, so that process is a little bit foreign to them.

But to the issue of municipalities, a municipal council, if they decided—if there’s a planned development that’s to come forward before a municipality that is not consistent with the official plan, the municipality can say no. It’s their say and nobody can appeal that as long as it follows the official plan. So if, let’s say, the official plan says, “There will be no development in this particular area,” for whatever reason, and a proponent comes forward and says, “I’m applying for development in that area,” and it’s not consistent with the official plan, the municipality has every right to say, “No, there will be no development.” No such provision is put in this legislation that officially gives the First Nations the ability to ensure

that what's in their official plans—that at the end of the day, they're masters of their own destiny.

The other issue for municipalities—and, again, a right that we've not given in this legislation—let's say somebody does come before your municipality—and you know that more than I do because you sat on municipal council; I didn't. My understanding of the rules of municipalities is based on the work I've done as a provincial member, which is a very, very different view than you would have as a former councillor. Let's say somebody does come forward to you as a council and says, "I do have a planned development that is consistent with your official plan." The municipality, in the end, can, again, say no. Is it appealable? Yes. The proponent of the planned development can bring it before the Ontario Municipal Board and a decision will be made, but there is at least some sort of a hearing process. That kind of process doesn't really exist in this legislation. I guess I have a bit of a hard time trying to understand why we give municipalities a certain right, and to a large extent don't give an equal right—and I'm not arguing it should be equal. I think they're different. I think we created municipalities; First Nations were there before we came along, so I think we need to respect that they were nations before we got here. But at the very least, we're not even giving them an equal right to planning that is given to municipalities.

So on (a), I can't support it on the basis of that.

"(b) supports the environmental, social and economic objectives" etc.—motherhood and apple pie, Minister. I'll give you that one. That's motherhood and apple pie.

But here's the kicker, which is (c)—and this will speak to Mr. Hillier's point. I understand where he's coming from—"is done in a manner that is consistent with the recognition and affirmations of existing aboriginal and treaty rights" set out in section 35. Agreed. I understand. Your point is well taken, but—where the heck did it say sections? Oh no, excuse me—I don't agree with (b). I got it mixed up.

"(c) is done in a manner that is consistent with the recognition and affirmation of existing aboriginal and treaty rights in section 35 of the Constitution Act, 1982, including the duty to consult."

There's not only the duty to consult; there's also the duty to accommodate. I think the word "accommodate" needs to be put in (c).

I don't agree on (b). That's not motherhood and apple pie. This is where the problem lies. It has to be consistent with what is in section 6, and if you go and look at section 6, it says, "The following are objectives for land use planning in the Far North:

"1. A significant role for First Nations in the planning."

I don't know. I look at my First Nations friends. Do they want a significant role, or do they want to have an ability to have a say, in other words, to have the final say? It's about the ability to have that final say. It's not about having a significant role. They want to have an ability to develop their own land use plan based on some

principles that will be negotiated with the province, but that's for them and you to work out.

But then you look at 2—and this is where I'm going to get in a little bit of trouble with my environmental friends, because I'm more of an environmentalist than they are, and I say that in all honesty—"The protection of areas of cultural value in the Far North and the protection of ecological systems in the Far North by including at least 225,000 square kilometres," roughly 50%. The problem I have: We can protect 99.9%. Why are we saying 50%? You protect 99.9% by having good planning rules that say how development is to happen or not happen in particular parts of that territory.

Saying that we're going to have 50% is an arbitrary number, in my view, that has been put out there, that is noble, that is understandable. It's a great sound bite: "We're protecting 50%," says the government. But at the end of the day, who the heck is to determine where a mine's going to be found 15 or 50 or 100 years from now? Who's going to know what development will be available when it comes to the lands that are in the Far North, when it comes to any kind of economic development? How do you determine where that 50% is going to be?

You're going to get it wrong, even if you try to get it right. Even if I tried to figure out where the 50% would be, I would get it wrong. Even if they tried to figure out where the 50% would be, and "they" means First Nations, they would get it wrong. Technology changes with time.

I think what's more incumbent upon us is not putting an arbitrary number of 50% as an area that we want to protect. I think what we're trying to do is protect it all. You protect it all by saying some very fundamental things: Will establishing a mine in this particular area be, first of all, harmful to the environment in a way that is going to create significant damage that cannot be repaired? I'm going to say it here, and I come from a mining community: If it's going to be so significant when it comes to the damage to the environment, then maybe we shouldn't make it happen. Who better to figure that out than First Nations? They're the ones who live there.

Number two, if there is to be a development of a mine—and I'm just using a mine as an example—then let's have some principles about how that development is to happen so that we're in fact able to do the development in some way that has a minimum footprint on the environment and on the area and that is able to significantly lower the risk when it comes to its impact on the environment.

I'm going to vote in opposition to this one, not just because I don't want to vote in favour of any this because of the process we're under—I think the government is actually trying to do something here—but again, because the process is such that we have really not had a chance to allow First Nations to deal themselves with what the planning issues are, what questions need to be asked, what are the areas of interest. All that kind of stuff has to be done first before we ever draft an act. We're going to end up in this type of legislation that I think at the end

misses the mark and is minimal when it comes to the ability for First Nations to be able to protect themselves.

The Acting Chair (Mr. Shafiq Qaadri): Are there any further comments on government motion 1? Mr. Hillier.

Mr. Randy Hillier: Mr. Bisson has alluded to just what is the failing of this bill. It sets out a joint planning process, but we have predetermined targets of this joint planning process. Section 6: a quarter of a million square kilometres will be off limits. There will be no planning there. We don't know where that quarter of a million square kilometres will be, but it's off limits. It's not a relationship when we say, "You're going to have joint planning with us, but we're already going to set the targets: a quarter of a million square kilometres of inter-connected space."

Let's just forecast a little bit down the road if this does go through in this fashion. The First Nations will be obligated to do those land use plans in conjunction with bureaucrats from the Ministry of Natural Resources and from other ministries. They're going to look at this act, and they'll say, "Well, we have to exclude a quarter of a million square kilometres of interconnected space." That's an obligation; it's a legal responsibility. They will not be allowed to jointly plan and administer with First Nations something that is contrary to the legislation. Even the minister will not be able to make that change. It's set in the legislation that a quarter-million square kilometres are excluded from opportunities and from First Nations' abilities to do anything there.

1530

The whole premise of calling this a joint planning process, when you have a predetermined and pre-set outcome—that's being dishonest, really. When you have a predetermined outcome, is there joint planning? I say, obviously not.

Following up, furthermore, we have seen that we don't know which quarter-million square kilometres are going to be excluded, and we don't know what commodities are there. We don't know what resources are there, because we just have this finite, pre-set amount of land, but we don't know what land, we don't know where it is. We don't know what's under the ground.

I've talked with many people in the First Nations communities, and we all know it intuitively ourselves: A land use plan is not something that is done overnight. It's not done in a week or a month. I've talked to First Nations communities that have been going through the hoops of bureaucracy, looking at seven, eight and more years, to create a land use plan. And just imagine—again, just to forecast, to have a view—what happens? We finally do get a plan put together, after five or seven or eight or 10 years, and new technologies have come online that make extracting of resources more feasible. We may even find new commodities that we don't know about today that have an economic value in 10 years' time. But we're not going to let anybody prospect or look for them. We're not going to allow anybody to extract them. We're not going to allow the people who live there

to derive any benefit. We're creating a condition where—I think, in section 6, paragraph 4, it says, "Enabling sustainable economic development...." What you're ensuring is no economic development. You're ensuring that the economic level that is now in the north will never be exceeded in the north. That's what the Far North planning act does.

Now, just look at what other jurisdictions in this country are doing with regard to First Nations. We've seen powerful, unique, imaginative ways to really build relationships with First Nations, where they have far greater autonomy, where they have the ability to bring themselves out of very poor economic conditions on many of our First Nations reserves. There are provinces in this country that have gotten it right, that have sat down with their First Nations and really have come up with consensual legislation that empowers First Nations, gives them autonomy, gives them a level of sovereignty, gives them the ability to be an economic engine. Bill 191 fails on all those counts.

We'll oppose this amendment as well.

The Acting Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. Any further comments? Ms. Jeffrey—

Mr. Gilles Bisson: I just want to pick up on the one point that Mr. Hillier made, because I think it really is an essential point.

One of the objectives that we're trying to get into this act is to provide some sort of certainty as far as what the rules are. If I'm a developer, what do I need to do, as a developer, to be able to go forward with the project? That certainty creates an atmosphere for investment, period. That's the point that you're making. Talk to any of the First Nations folks; that's one of the first things they talk about to me.

If you listened to the press conference that we had earlier, at 1 o'clock today, allowing this bill to go forward in the present version, without the consent of First Nations, is not going to create certainty that you're looking for. In fact, it will create a disincentive to investment, because who's going to want to invest in an area where there's no agreement about how planning is to go forward?

I've got to take the government at its word when they say they have a policy of Open Ontario. I've read your press releases as they relate to 191. It ain't gonna open Ontario if you don't have the First Nations onside on the very basic issue of land use planning.

If one of the objectives as stated, as Mr. Hillier did, is that we need to have some certainty so that those who invest in Ontario know what the rules are, we've got to make sure that we get this right. Because if we don't, in fact, we're going to be creating a disincentive for investment.

I'll tell you, we all know this, sitting around the table—this is no preaching by a New Democrat to Liberals. Maybe it is; I don't know. Capital's got feet, and it's going to run as far as it needs to in order to invest wherever if things aren't in such a way that allows them

to make decisions that they can then say, "Okay, here are the rules. This is what's to happen."

I just want to make one other little, very quick point on one thing that has been really clear to me over the years in dealing with mining companies and others. They're not opposed to good environmental regulation, although some people would categorize them that way. They're saying to us, "What the hell are the rules? Tell me what you want. Tell me what your principles are of what you want. Tell me where you want me to go, and I'll build it into my model. If I can do it within the context of whatever economic activity I'm carrying out and make a profit, it's part of my budget. I'll do it. But I need to know what the heck the rules are." That's part of the problem we have in the Far North: We don't know what the rules are. Every industry is having to go out and negotiate individually with each First Nation, trying to figure out what the heck the rules are.

The province's willingness to insert itself into this debate—I think it's healthy that the province wants to play a role in determining how we are going to establish rules that everybody can operate by, that protect the environment, that do all the things that we talked about earlier but ultimately create a certainty, I think, that the financial community needs in order to invest. All that said by a social democrat.

The Acting Chair (Mr. Shafiq Qaadri): Are there any further comments? Ms. Jeffrey.

Hon. Linda Jeffrey: Mr. Chair, I would like to respond to everything that both opposition parties have indicated, but I don't know if I have enough time today, because I think they've covered all of the bill, and we're going to get into the specifics later on. But a couple of—

Mr. Gilles Bisson: The purpose clause is very wide.

Hon. Linda Jeffrey: It is, but I feel like I need to jump in on a couple of issues.

Mr. Bisson talked about the fact that we don't know where a mine is, we don't know where the next hydro-electric dam will be, we don't know where the next economic opportunity is. I think at the end of the day, if you've done land use planning, even in a southern municipality, you understand that land use planning is not a static document. It's amended from time to time, based on what happens technology-wise or resource-wise, and every community has that opportunity.

But we realized that the north is a very different place; it's a special place. We have tried to customize the language that we used in this bill to reflect what we've heard in the north.

We know that land use planning isn't static. We've put language in the course of the bill that allows the First Nations communities to amend the plan, and in fact they will be choosing whether or not they put those amendments in place. It would be approved by First Nations and the minister. But in this case, it will be approved by the minister prior to the land use planning occurring, and final approval would occur by the First Nations community, and that's in the bill.

Mr. Hillier claimed that all First Nations would feel obligated to do land use planning. Nothing could be further from the truth. There is nothing that forces any First Nations community to do land use planning. They can choose to initiate it, and if they choose to initiate it, they can decide where, when and how that will occur. They, in fact, will be allowed to determine what would be a protected area.

Your claim that areas will be frozen and no activity will occur—that's not true. Protected areas will also be allowed to have business occur in them. For example, tourism could still occur in a protected area, but it will be the determination of the First Nations community. I'm not here to tell them what should be happening in their community. They know their homeland better than we do, and they're going to be the ones that initiate and do the land use planning and bring it back and show us what they would like to have as a plan.

1540

Mr. Randy Hillier: Draw me the quarter-million square kilometres; I'd like to see you draw me that.

Hon. Linda Jeffrey: Mr. Chair, if I can conclude, I'd like to make it clear that the community land-based planning will be jointly prepared, and I expect that each First Nation community will determine what their protected areas are. And if we can get to the rest of the bill, perhaps you can find where in those clauses it will occur.

The Acting Chair (Mr. Shafiq Qaadri): Thank you, Ms. Jeffrey. Further comments?

Mr. Gilles Bisson: I hear your comment that land use plans are not static, but as I read the bill—and I'm going to go back and do a little bit more reading tonight—to a degree, it is. As I read the bill in its entirety, it would be fairly difficult for somebody to undo a protected area, should it be protected under the bill, because there has to be a process at the end so that the public is informed, as the bill spells out, and the public will have its ability to comment.

My point is that politically it would be pretty difficult for anybody to undo the protection—well, we have all kinds of examples where that happens now within municipalities. Anyway, it's just the point that I make.

To your issue about final approval by First Nations, again I just beg to disagree because, as I read the bill, at the end of the day it's the minister ultimately who's going to approve land use plans. There's a bit of a joint process that's set up. I wouldn't say that there isn't a role for First Nations, but at the end, even with your amendments that you brought forward—and I was just rifling through them because I remember reading the amendment—basically, as I understand it, the First Nations have the final right of approval, but then so does the minister, as I read the amendments. But we'll come to that a little bit later.

The Acting Chair (Mr. Shafiq Qaadri): Thank you. Further comments?

Mr. Randy Hillier: I want to just say we have the targets set in the legislation, a quarter-million square kilometres. That has to be done. If it's not done, then the

minister is in violation of the legislation. You could be held liable and brought to court for not upholding your own legislation.

I'm just going to put this out: A quarter-million square kilometres is protected and eventually those lines will be drawn in somewhere and they will be interconnected, as the legislation says. So what happens when somebody finds a valuable resource on 1,000 acres, on 100 square kilometres? You're saying that this is not static. Of course it's static. It's targeted. What are you going to do to be able to facilitate the people in the north to extract and benefit from that resource in that quarter-million square kilometres?

We know—we may pretend, but we've all been through the process—you don't change a land use plan overnight. You don't change legislation overnight. Going back to what Mr. Bisson said, certainty is the name of the game here. Investment requires certainty. There is no certainty here.

I'll just reiterate once more: Why wasn't there the interest in planning for good relationships and good administration so things could be done, so there could be certainty for investment instead of just planning for land use, not planning for good relationships? Why is anybody going to put any investment to go searching for opportunities in the north when you have this bill as the obstacle in front of you?

The Acting Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. Just before we proceed, Mr. Bisson, I'd just alert you that those seats are for members of Parliament duly elected, and once that individual is elected to the Legislature, he's of course welcome to come back and resume that seat.

Mr. Gilles Bisson: I'll find a seat somewhere for him.

The Acting Chair (Mr. Shafiq Qaadri): Thank you. Are there any further comments?

Interjection.

Mr. Shafiq Qaadri: Mr. Bisson, I'm going to give it to Ms. Jeffrey and then offer it to you.

Hon. Linda Jeffrey: Chair, I don't want to prolong the debate, but I want to make a clarification. Obviously, Mr. Hillier did not understand what I said. When I talk about a static document, I'm talking about the fact that the planning process is not a static process. A mine, obviously, is static. Based on my conversations with First Nations communities, I think they're extraordinarily good stewards of the land, and I think, in fact, they would like to protect more land than the planning objective that was placed in this bill. I look forward to more conversations with them about protected areas.

The Acting Chair (Mr. Shafiq Qaadri): Thank you, Ms. Jeffrey. First Monsieur Bisson, and then open.

Mr. Gilles Bisson: We're going to get a chance to get into this a little bit more in detail later as we go to other sections, but as I read the bill, Minister, in regards to the minister's ability to approve a plan—and I'm just reading under subsection (14); I believe it's under section 8—"The minister shall not make an order approving a land use plan ... unless"—and then it goes on to factors for the

minister to consider. As I read your amendments, it still at the end of the day leaves you in the position of being boss of the beaver.

It would be interesting to get into that and to get your explanations later, because as I read it, you still have the authority to approve the plan or reject the plan if you don't find that it's consistent with whatever the values are that are set out.

The Acting Chair (Mr. Shafiq Qaadri): Thank you, Monsieur Bisson. Are there any further comments before we move to the vote considering government motion 1? Monsieur Bisson.

Mr. Gilles Bisson: Can we require 20 minutes?

The Acting Chair (Mr. Shafiq Qaadri): Are you asking for a 20-minute recess?

Mr. Gilles Bisson: Yes, yes. This is to be helpful with our other discussion.

The Acting Chair (Mr. Shafiq Qaadri): All right, a 20-minute recess.

The committee recessed from 1545 to 1605.

The Acting Chair (Mr. Bob Delaney): Thank you very much, one and all. Welcome back. We are dealing with section number 1, government motion number 1—

Mr. Wayne Arthurs: Recorded vote, please.

The Acting Chair (Mr. Bob Delaney): —and we're calling for a recorded vote.

Ayes

Arthurs, Jeffrey, Kular, Levac, Sousa.

Nays

Bisson, Clark, Hillier.

The Acting Chair (Mr. Bob Delaney): I declare the motion carried.

Shall section 1, as amended, carry? Carried.

We will move to section 2 on page 2: Government motion number 2. Ms. Jeffrey.

Hon. Linda Jeffrey: I move that the definition of "Far North policy statement" in section 2 of the bill be amended by striking out "7(6)" and substituting "6.2(7)".

This is a housekeeping amendment to reflect the correction in section numbers.

Mr. Gilles Bisson: That was my question. Could you just give me a second because I saw it as a little bit more than that. Maybe I'm reading it wrong. Just a question to the ministry: So 7(6) exists in the current act, as I see it, right—that's why I was a bit confused here—and now you're going to replace it with the same language but you're moving it to section 6.2? Am I correct?

Hon. Linda Jeffrey: I'm told it's housekeeping.

Mr. Gilles Bisson: So it's only strictly a changing of the numbers on it. It doesn't change in any way, shape or form the actual content of that Far North policy statement, right? Just looking for somebody to shake their head to the affirmative.

Hon. Linda Jeffrey: It doesn't change the content, no. You're right.

Mr. Gilles Bisson: So then I have another question but I can wait and let Mr. Hillier go first.

Mr. Randy Hillier: Go ahead. I'm still trying to see where all these numbers come into play here.

The Acting Chair (Mr. Bob Delaney): Mr. Bisson, you still have the floor if you have any further questions.

Mr. Gilles Bisson: I do. I just thought Mr. Hillier had wanted to get in on that part.

This refers to the policy statements, and we all know what policy statements are. The way that these are run out, paragraphs 1 through 8, weren't there submissions that I've seen by some that wanted to see that extended beyond the eight that are there? I'm just looking at MNR staff or maybe counsel. It seems to me that some of the policy statements had to take into account things other than the eight points that were raised. I just—

Interjection.

1610

Mr. Gilles Bisson: Yes, if I could get an answer. It just seems to me there were.

The Acting Chair (Mr. Bob Delaney): Just before you answer the question, please state your name for Hansard.

Ms. Sheila Ritson-Bennett: Sheila Ritson-Bennett. So the question is with regard to the substitution of the number. It's substituting the number that relates to an amendment that's further along in the package.

Mr. Gilles Bisson: Yes. No, I understand that part, but my question was, in the submissions that the committee received and in the conversations that you've had with First Nations, wasn't there a desire to increase the bullet points, 1 though 8, beyond what is contained there now to other —

Ms. Sheila Ritson-Bennett: I'm afraid I can't speak to what those conversations were. I wasn't at those.

Mr. Gilles Bisson: Minister, do you remember, because I seem to remember having this conversation with folks. Hence, when you don't have committee hearings, it gets to be a real problem.

The policy statements say, "The minister shall prepare policy statements which may relate to the following matters," based on the following: "1. Cultural and heritage values.... 2. Ecological systems"—I'm not going to read them all, but I think it was the PDAC, the Prospectors and Developers Association of Canada, that raised the point in regard to mineral potential. I'm just wondering why that kind of stuff is not in there. I'm just curious.

Hon. Linda Jeffrey: I'm going to guess, Mr. Chairman. Maybe I can respond: I think there is some more flexibility further on in the bill that would reflect that. I'm hoping that we'll be able to clarify that later on in the bill.

Mr. Gilles Bisson: Okay.

The Acting Chair (Mr. Bob Delaney): Any further debate? Shall government motion number 2 carry? Carried.

Mr. Gilles Bisson: No.

The Acting Chair (Mr. Bob Delaney): Okay. Government—

Mr. Gilles Bisson: Just for the record, so that it's recorded at least in Hansard, I voted against. I understand that I was slow off the mark, but I was voting against.

The Acting Chair (Mr. Bob Delaney): Motion number 3, Mrs. Jeffrey.

Hon. Linda Jeffrey: I move that the definition of "First Nation" in section 2 of the bill be amended by striking out "which was made" and substituting "which latter treaty was made".

This is a housekeeping amendment to clarify that it was only Treaty 9 that was signed in 1905 and 1906 and not Treaty 5.

The Acting Chair (Mr. Bob Delaney): Any discussion?

Mr. Gilles Bisson: If you can give me two minutes to take a look at that. That's still under "Definitions," right?

Interjection: Yes.

Mr. Gilles Bisson: So is that under definitions of First Nations? It currently says, "means a band having one or more reserves set apart for it in the area of Treaty No. 5...." Are you saying it excludes Treaty 5? Is that what you're getting at here?

Hon. Linda Jeffrey: No, I think it's a clarification, but maybe I can get legal counsel to affirm that.

Mr. Gilles Bisson: Ah, I get the drift now. I understand. I got it, I got it. I figured it out. Saved by the bell. If I'd read the amendment in its entirety, I would understand what you were trying to do. Thank you.

The Acting Chair (Mr. Bob Delaney): Does that cover your discussion? Okay. All right. Any further discussion? Shall motion number 3 carry? Carried.

Shall section 2, as amended, carry? Carried.

Page 3 is a government notice of motion. We'll deal just with section 3—

Interjection.

The Acting Chair (Mr. Bob Delaney): Sorry. Debate?

Mr. Gilles Bisson: My question to the minister is that this strikes "This act shall be interpreted in a manner that is consistent with the recognition and affirmation of existing aboriginal and treaty rights in section 35 of the Constitution Act ... including the duty to consult."

Two points: (1), I take it that's going to be put in the purpose clause, and that's why you're taking it out; and (2), to my point, it doesn't say "accommodate." Why is the word "accommodate" not within the purpose clause? I'm dealing with it here because it originally was dealt with in section 3 of the bill.

Just as your ministry folk are coming forward to explain, it is pretty clear what First Nations have said right from the beginning: that it's not just the duty to consult but it's also the duty to accommodate which concerns them. In the original section 3 of the bill, it's only the duty to consult that is described in the bill, not "accommodate," and if we now look at the purpose, it's

kind of the same. So what was the basis of the decisions for not including the word “accommodate”?

Ms. Jessica Ginsberg: Jessica Ginsberg, MNR legal services. I don’t know if this will be of assistance to you, but I’d like to draw your attention to both section 2, the purpose clause, of the Mining Act, as well as the interpretation clause of the Green Energy Act, both of which use very similar language. I could read to you the purpose clause of the Mining Act, which has, “The purpose of this act is to encourage prospecting, staking and exploration for the development of mineral resources, in a manner consistent with the recognition and affirmation of existing aboriginal and treaty rights in section 35 of the Constitution Act, 1982, including the duty to consult...” Then it goes on to say, “and to minimize the impact of these activities on public health and safety and the environment.”

Mr. Gilles Bisson: But back to my point that it is the view of First Nations and that decision of the Supreme Court that it was not only the duty to consult that was given by way of that decision; it was also the duty to accommodate. So why is it that the government has chosen not to put the word “accommodate” in that particular section? I think it’s more a political question than a legal one, to be fair to your staff.

Hon. Linda Jeffrey: I think what we were trying to do was to find consistency with other pieces of legislation. We were just trying to find a similar piece of legislation. That was really the whole point. It wasn’t a decision to remove anything.

Mr. Gilles Bisson: But as I said, Minister, in all respect, with the changes to the Mining Act the same issue was raised. What First Nations clearly said was, “We want the word ‘accommodate’ included with the word ‘consult.’” Just because we got it wrong in the Mining Act doesn’t mean we’ve got to get it wrong in the planning act. So my question is, is there any willingness to amend that section to include the word “accommodate”?

Hon. Linda Jeffrey: I guess I would say, Mr. Bisson, that in the conversations I’ve had with First Nations communities, this wasn’t an issue that was raised in any conversations I had, and I don’t recall that particular request to have been made. Our goal here is to continue the conversation with First Nations communities, and as I said earlier today, it’s the beginning of a dialogue.

Mr. Gilles Bisson: Well, in all respect—

Hon. Linda Jeffrey: So it wasn’t to hold things back. It wasn’t to prevent the conversation from happening, but it was an attempt to try and find legislation that had a common usage, whether it was mining or land use planning.

Mr. Gilles Bisson: I understand your argument about trying to make it consistent with other acts, but my argument to that point is, just because something is wrong, you don’t go and make it wrong, then wrong and wrong again, being the third act that uses this particular language.

To your point that in conversations you’ve had with First Nations: I know in fact they’ve had these conversations, and the word “accommodate” is crucial to whatever discussion they’ve had on the planning act. That’s been sort of central to the whole argument: “It’s not that we just want to be told somebody is coming here and maybe they’re going to be doing some development, but we need to be accommodated.” We need to have something in legislation that clearly states that the crown’s responsibility under the decision is not just to consult but to accommodate. Your response to that just before I go to the next part: Why would we not include the word “accommodate”?

Hon. Linda Jeffrey: Mr. Bisson, I have spent the last month trying to get people to talk about the bill and to talk about the proposed amendments. I’ve had some difficulty getting people to return my phone calls and to have a discussion about it. I don’t want to put any chief on the spot, but at the end of the day there was an opportunity in the last month to make the changes and to provide us with advice to make the bill better. There hasn’t been a lot of that conversation happening. The improvement to the bill could have been made in the last month had chiefs attempted to provide me with that advice.

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Mr. Gilles Bisson: I’ve just got to say—I don’t know how I’d say it more forcefully. That whole issue of how it’s not just a duty to consult but to accommodate is central to what this debate is all about. I find it a little bit hard to believe that First Nations have not raised this point with you, because I know it has been raised with me time and time again. In fact, we must have had four or five conversations since this committee started with First Nations on that point itself. I see people furiously writing notes as we’re having this discussion, which tells me they all have something to say about whether they’ve been consulted or not when it comes to the duty to accommodate. So I just want to make very clear that you understand: First Nations are requesting that there be a duty to accommodate, period. That’s the first point.

The other point is—and I understand, Minister. I don’t want to attack you; I don’t think you win anything in committee by playing those types of games, but I don’t know how to stress it more forcefully or more friendly, or whatever way you want to say it. Picking up the phone and calling somebody, or having a chat with them at an airport, or dropping into the community to have a chat, is not what First Nations consider an issue of consultation. “Consultation” means there’s a to-ing and fro-ing of ideas, there’s a discussion, there are terms of reference, and then there’s a proper process by which everybody gets a chance to wrestle with the issue, to think about it, and then finally there’d be some sort of resolve at the end of the process.

I use the IBA processes that we’ve gone through in communities across the North when it comes to development. In each and every case, there has been a referendum at the end, because the leadership understands that

it's not for them to decide. A duty to accommodate doesn't mean to say the chief gets to decide, or the council; it's about the community. That's the thing that's so foreign to us, because we come from structures where municipal councils and federal and provincial Legislatures are a power unto themselves, and the only time we really consult is every four years when it comes to an actual election.

Please understand that the whole point of consulting and accommodation means to say that you really do have to have some meaningful discussion with the First Nations. They need to go back and think of what the conversation was about so they know, when it comes back to you, to say, "Here's what we want to talk about," and then try to resolve those issues, so that in the end there actually is a process for the community to make a decision.

Again, I just say, is there any willingness on your part to include the word "accommodate"?

Hon. Linda Jeffrey: Mr. Bisson, I too do not believe that a conversation in an airport is consultation. I have read that in the newspaper—that is a conversation you have with somebody. I realize that that story has floated around. My goal this summer was to have a conversation, and our government has been having a conversation for the last two years about this bill.

The first time we went out on committee was last summer, when I was a backbencher and travelled with committee. Certainly, you were there at the same time. It was a very heated conversation at that time. We took that advice, came back, made amendments, and this time we tried to accommodate many of the requests that we heard from chiefs that the bill did not reflect their understanding of what land use planning would look like in the Far North.

It is my goal to continue that dialogue. It's too important. We have to protect the Far North as well as provide economic development. I understand that chiefs want us to get this right; we too want to get it right.

Mr. Gilles Bisson: I'd just say that it was pretty clear in the documents that were submitted by NAN—and I have it here—that the issue of the duty to accommodate is one that they actually raised in documents to you, so to say, "Nobody has had that conversation with me," is not taken extremely well by those who have been trying to have that conversation with you at the beginning.

I think my friends from the Conservatives have a question; I'll let them have their question at this point.

The Acting Chair (Mr. Bob Delaney): Mr. Hillier.

Mr. Randy Hillier: The duty to accommodate was heard so loud and clear during our committee hearings last year when we travelled. The minister was on that committee. I'm sure you heard those phrases as frequently as I did and as Mr. Bisson did. It was everywhere we went, and it was from every First Nations community that came before the committee. To think that because you haven't had conversations where that phrase came up since you became minister is to disregard all the work and all the value of the original committee. We were all

on that committee. We heard it as clear as an uncloudy day. That duty to accommodate in the Mining Act and in the Far North Act was spoken of often.

When you're looking at consistency as being the prime motivator, to be consistently bad is still a good thing. They didn't get the duty to accommodate in the Mining Act, and now they'll be consistently bad and not get it in the Far North Act. Consistency ought not to be the objective when it's the wrong thing that you're doing.

I also have to take issue: The minister mentioned that this is the beginning of the dialogue. Well, how mucked up and muddle-headed is that? We pass the legislation, and then we begin the dialogue? That's not my concept of democracy. My concept of democracy is that you have the dialogue first and the legislation is spawned out of the dialogue. This idea that we're going to begin the dialogue when we're on the eve of third reading of the bill, it's just absolutely abhorrent that that concept can be put forth to the assembly. It's just too much to believe.

On this other concept that you've had trouble getting people to talk to you of this bill, I know—and I'm sure Mr. Bisson from the third party will agree—that there has been no shortage of correspondence and there has been no shortage of people wanting to talk about this bill. I've heard it every time I've gone to the north and I've heard it every time in my constituency office in southern Ontario that people are outraged. We can see it; the evidence is before us. Significant numbers of members and representatives of the First Nations are here in Queen's Park this week. They're wanting to talk about this bill. So I find it incredible that the minister has had difficulty talking to people about Bill 191.

How do you have a dialogue if you have trouble talking to people? But I would certainly say that legislation comes forth out of the dialogue. We sort of have the cart in front of the donkey on this bill.

The Acting Chair (Mr. Bob Delaney): Ms. Jeffrey.

Hon. Linda Jeffrey: I guess I would like to re-remind members that, other than the Mining Act, this bill is the only piece of legislation that would actually reference aboriginal and treaty rights in the purpose statement. That's kind of an unusual situation.

I guess I've left people with the impression that no one would talk with me. That's not exactly the way I meant it to come across. I had great conversation with First Nations communities that I visited with this summer, with very productive and thoughtful advice that they provided to us.

I guess the conversation with regard to the clause-by-clause is where the conversation just didn't pan out the way I would have liked. I think that the legal language of a document is where you need to tweak and find better language that reflects what both sides agree is the goal of the bill, and we haven't had those discussions in the last month. We might have been able to find different language over the course of the last month if we had had more conversations, but the conversations kind of stopped.

Whatever comes forward in the future, within the obligations pursuant to the recognition and affirmation of existing rights, is something that will evolve over time in case law, but this purpose references a spectrum of section 35. That's the best advice I can give at this point.

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Mr. Gilles Bisson: Well, I don't want to belabour the point, but I just want to make it for the record. It's pretty paramount—I was just looking at the documents that I have from various First Nations, and I'm just going to go through the Shibogama First Nation Council, which pretty clearly says, "Shibogama First Nation Council, the regional body representing this community, has spoken with its members regarding Bill 191. The people have clearly expressed their expectation that Ontario will fulfill its duty to consult by visiting them to discuss Bill 191. People will not and cannot give their free and prior informed consent"—which is the duty to accommodate.

So in each and every document that I have—that you have, because we received the same documents from First Nations—the duty to accommodate is one that is paramount. The problem, I guess, with the argument that you've put forward—and you have the majority on the committee, so you're going to do what you're going to do—is that "duty to consult" means, "Hi, how are you? Minister, are you doing fine?" I just consulted you. Duty to accommodate is, "Oh, what can I do to help you? How can I address your concerns?" It's the latter part that's not in here that's making people feel uncomfortable. You can't stand on just the duty to consult because that only means that somebody's walked in and said, "Hello, how's it going?" and walked out. We've not accommodated the issues and concerns that people have raised, and that's why "accommodate" should be included in the legislation.

The Acting Chair (Mr. Bob Delaney): Mr. Hillier.

Mr. Randy Hillier: I'd like to just follow that up. There is case law demonstrating that duty to accommodate. I think when the minister says, "Nobody raised this during the clause-by-clause. It didn't come up"—even though we all heard it during the committee. To hand people in the north this bill with, "What are your concerns? Talk to me about it"—I'm not going to expect everybody who's impacted by this bill to go through it clause by clause and look at each individual word within the legislation and say, "Well, I dislike this word. This word is not proper. It could be a better phrase over here." That's a little bit rich.

People have been clearly expressing their view that they dislike the bill. They dislike significant components of the bill. They see a future of hardship with this bill. And to say that somebody didn't mention the duty to accommodate—well, I know that I heard it so frequently, and I wouldn't expect anybody in the general public to go through the bill in a clause-by-clause format. That's our job. That's what we're paid to do. That's what we're paid to look at. We're here to represent our constituents' concerns and ensure that the rule of law and justice is incorporated within the legislation.

Minister, I will have to say that we know what was said to us last year; whether it was said to you last month, I don't know. We know we heard it so often last year, and we also know there is case law demonstrating a requirement for duty to accommodate. It ought to be included in the bill.

The Acting Chair (Mr. Shafiq Qadri): Thank you, Mr. Hillier. The legislative counsel, Mr. Wood.

Mr. Michael Wood: My role is to offer some comments about possible interpretation of the legislation, not, of course, any comments about the policy behind it. With that in mind, I can supply, perhaps, some points for consideration.

One is that whether we're dealing with the language in the present section 3 or the language adopted by the motion for section 1 in the purpose clause, the main thing that the language focuses on is the recognition and affirmation of existing aboriginal and treaty rights. There is then the word "including," so anything following "including" would not modify or change what precedes it. So if you didn't add in a duty to accommodate, it still wouldn't change the fact that the overall obligation is to ensure that things are done consistent with the recognition of affirmation of existing rights.

The second point is—and ministry counsel perhaps could comment on this, if you desired—it seems to me that duty to accommodate would have to be fleshed out by what you mean. To respond to one specific comment, I think made by Mr. Bisson, saying that if you happened to run into somebody in an airport and said, "Hello, how are you?", that constitutes adequate fulfillment of the duty to consult, I would think that it would not. I would think a court would hold, as it often does, that there is a reasonable standard, and when you talk about a duty to consult, you have to provide a reasonable opportunity for a party to respond.

Ms. Jessica Ginsberg: Jessica Ginsberg, MNR legal counsel. I'd just like to follow up on what legislative counsel has just said.

Quite correctly, in using the word "including," that gets to the point which Minister Jeffrey made earlier, that this references the full spectrum of what would follow from the recognition and affirmation of existing aboriginal treaty rights in section 35 of the Constitution. That's really, I think, the main point and the main source of what the crown's obligations could be. Those obligations can evolve as case law continues to speak to section 35 in the future.

Here we have included one example, being "including the duty to consult." It's not to say that that is the full range. I could argue that the duty to consult can include the duty to accommodate where it's required, but again, that is something that evolves over time with the case law. Again, this is just an example; the way that it's phrased is just an example of what can fall under that spectrum of section 35.

The Acting Chair (Mr. Shafiq Qadri): Mr. Bisson?

Mr. Gilles Bisson: To the point: It "can"—up to interpretation. That's the point.

It's clear in the act. What the act intended was that the rights under section 35 of the Constitution Act be respected, and that includes the duty to consult. We're pretty clear as a Legislature: We're saying that "includes." That's what we're talking about.

By leaving "accommodate" out, it leaves it to interpretation where you've got to litigate, quite frankly, if "accommodate" is even included in that 1985—in section 35, if you follow what I'm saying.

My only point is, why not put it in at the beginning? Then it's clear that what we were talking about as a Legislature was not only the duty to consult but also to accommodate.

To the point that was made by my learned friend Mr. Wood, leg counsel: In some way, if we put "accommodate," we need to define that. What is "accommodate"? Well, the same could be said for "consult." Do you follow where I'm going? You have to argue both; you can't argue one, I guess is what I'm saying.

It seems to me the government has made a decision, for whatever reason. I'm not going to impugn motive; that's their decision. I just think that First Nations would have been a lot more comfortable if, in the purpose clause, we actually did say it wasn't just the rights inferred under section 35, including the duty to consult, but it should also be to accommodate. It would have made their comfort level rise.

The Acting Chair (Mr. Shafiq Qaadri): Mr. Hillier.

Mr. Randy Hillier: I'm glad we've had some legal counsel here to flesh this out a little bit. I think it's important for us to look at these component parts.

I'll go back to some initial statements that I said. This bill is focused all on imposing a downtown Toronto view on northern land; whereas, if it had looked at planning for a real relationship with First Nations and our northern communities, the duty to accommodate could have been, and ought to have been, fleshed out in this bill, instead of just allowing and abdicating our authority to the bench.

That's our job. We should have included in this bill what "duty to accommodate" really means. Put the meat on the bones, instead of this statement that can mean different things to different people. Planning for good governance, planning for a good administration, planning for a good relationship, that's where this bill fails miserably. It fails once again by not including that duty to accommodate, allowing that to be interpreted by our courts, and as legislators abdicating our responsibility to provide direction, to provide meaning, to put that meat on the bones so that people do have certainty.

Mr. Bisson spoke to it earlier, and I have spoken to it, about not having certainty. You can't have economic development, you can't have economic investment, you can't have jobs and prosperity, if you don't have certainty. You've failed; it's consistently failing, just as in the Mining Act.

Mr. Gilles Bisson: I just want to clarify that I understood what the minister said. So what you're saying is, all rights given under section 35 are pulled into the purpose clause when you say that including the duty to

consult doesn't necessarily negate the duty to accommodate. That's your argument, right? I just want to understand what you're saying, because that's the way I understood the argument being put forward.

Ms. Jessica Ginsberg: If I could speak to that in response, the purpose is to act in a manner consistent with the recognition and affirmation of existing rights, and that recognition and affirmation is something that will, over time, continue to be interpreted by the courts. The courts have already spoken to the duty to consult. They have already spoken to situations where accommodation would be warranted and required.

Mr. Gilles Bisson: What you're saying, in fact, is that this particular purpose clause does not negate in any way the obligation on the part of the crown to accommodate?

Ms. Jessica Ginsberg: There is nothing in this purpose clause, or anywhere else in the bill, that would negate the crown's obligations under the Constitution Act, whatever those obligations include.

Mr. Gilles Bisson: Including the accommodation?

Ms. Jessica Ginsberg: Where it has been found to be required and warranted, yes.

Mr. Gilles Bisson: So, for the record, just let the record show that in fact the crown does recognize the duty to accommodate. Thank you.

The Acting Chair (Mr. Shafiq Qaadri): Mr. Arthurs.

Mr. Wayne Arthurs: When we get to the vote, I'll be voting against this section. This is section 3, and I think in hockey parlance we'd probably describe this as ragging the puck.

Mr. Gilles Bisson: No, it's not ragging the puck.

Mr. Wayne Arthurs: In pond hockey.

The Acting Chair (Mr. Shafiq Qaadri): Thank you, Mr. Arthurs. I think that will be a separate subcommittee report on the hockey issue. But in any case, are we ready to proceed?

Mr. Randy Hillier: I'd like to call for a 20-minute recess.

The Acting Chair (Mr. Shafiq Qaadri): A 20-minute recess.

The committee recessed from 1642 to 1702.

The Acting Chair (Mr. Shafiq Qaadri): We'll resume. If there any further comments, I'll entertain them now.

We'll move to the vote on section 3. All those in favour? All those opposed? I declare section 3 to have been lost.

We'll move, if it's the will of committee, for block consideration of sections 4 and 5, seeing as no motions so far have been proposed. Shall sections 4 and 5 carry? Carried.

We'll move to section 6, government motion 4.

Mr. Gilles Bisson: Whoa, whoa. I quickly had a question.

The Acting Chair (Mr. Shafiq Qaadri): Yes, Mr. Bisson.

Mr. Gilles Bisson: I just needed an interpretation on something. "Non-application of act," when it says under

(b), “land not vested in the crown in the right of Canada”, we’re talking about federal crown land, right?

The Acting Chair (Mr. Shafiq Qaadri): Is this a general question, Mr. Bisson?

Mr. Gilles Bisson: Yeah, it’s just a general question to section 4.

The Acting Chair (Mr. Shafiq Qaadri): Fair enough. Please pose your question. I’ll allow it.

Mr. Gilles Bisson: I just want to make sure I understand that right. So we’re talking about land owned by the federal crown, right?

Hon. Linda Jeffrey: I’ll ask legislative counsel to answer your question.

Mr. Gilles Bisson: I take it that’s all we’re talking about here?

Ms. Sheila Ritson-Bennett: Sheila Ritson-Bennett, counsel, Ministry of Natural Resources. That’s correct. It would be federal land.

Mr. Gilles Bisson: Other than Indian reserves, what land far north would be federal crown land? I wasn’t too sure.

Ms. Sheila Ritson-Bennett: I don’t think—

Mr. Gilles Bisson: I don’t think there is any.

Ms. Sheila Ritson-Bennett: Yeah, but just to be clear as to where it does or does not apply: That’s why that’s there.

Mr. Gilles Bisson: So it’s just making sure, in case there might be. Okay.

The Acting Chair (Mr. Shafiq Qaadri): All right. So we’ll proceed now. Section 4 questions hopefully have been answered.

Shall sections 4 and 5 carry? Carried.

We’ll proceed now to section 6, government motion 4.

Hon. Linda Jeffrey: I move that paragraph 1 of section 6 of the bill be struck out and the following substituted:

“1. A significant role for First Nations in the planning.”

The Acting Chair (Mr. Shafiq Qaadri): Comments? Monsieur Bisson.

Mr. Gilles Bisson: Does that infer that points 2, 3 and 4 are then removed from the bill? Under section 6, “The following are objectives for land use planning in the Far North,” right? You’re saying that the following will be struck out and substituted. It currently reads, “A significant role for First Nations in the planning,” and then in your amendment it reads, “A significant role for First Nations in the planning,” but nothing else is mentioned after. So does that mean to say that the rest is erased?

The Acting Chair (Mr. Shafiq Qaadri): Mr. Wood.

Mr. Michael Wood: Actually, as it is presently written, this motion does not accomplish anything legally. It just restates what paragraph 1, section 6, of the bill says. To answer Mr. Bisson’s question, it does not in any way amend the following paragraphs of section 6.

Mr. Gilles Bisson: So is this like, whoops, a bit of a mistake?

Mr. Michael Wood: Yes. It would have been possible for the government, actually, to withdraw this motion.

Mr. Gilles Bisson: So this is the “whoops” clause. Okay. All right, we’ll let you have the “whoops” clause, but I just wanted to make it clear that it didn’t delete the others.

The Acting Chair (Mr. Shafiq Qaadri): Thank you. We’ll proceed to the vote, then. Those in favour of government motion 4? Those opposed? Government motion 4 carries.

Shall section 6, as amended, carry? Carried.

We’ll move now to consideration of a new section, government motion 5. Ms. Jeffrey.

Hon. Linda Jeffrey: Could Mr. Sousa read the motion, please?

The Acting Chair (Mr. Shafiq Qaadri): Mr. Sousa.

Mr. Charles Sousa: I move that the bill be amended by adding the following sections:

“Contribution of First Nations

“6.1 First Nations may contribute their traditional knowledge and perspectives on protection and conservation for the purposes of land use planning under this act.

“Joint body

“6.2(1) Any First Nation having one or more reserves in the Far North and any First Nation with whom the minister has agreed to work to prepare terms of reference under subsection 8(2) may indicate an interest to the minister to initiate discussions with respect to establishing a joint body to,

“(a) advise on the development, implementation and co-ordination of land use planning in the Far North in accordance with this act; and

“(b) perform the other advisory functions to which the minister and the First Nations that participate in the discussions agree.

“Discussions

“(2) If one or more First Nations indicate their interest under subsection (1) within six months after this section comes into force, the minister shall participate in the discussions with them.

“Content of discussions

“(3) The discussions shall focus on factors relevant to establishing the joint body, including,

“(a) the criteria that members of the body must meet to be eligible to be appointed to the body;

“(b) the functions of the body;

“(c) the procedures that the body is required to follow in carrying out its functions, including the frequency of its meetings and the selection of a chair or two or more co-chairs for it; and

“(d) any other matters that the minister and the First Nations that participate in the discussions agree to with respect to establishing the body.

“Functions of the body

“(4) The functions of the joint body may include,

“(a) recommending to the minister matters to include in the Far North land use strategy, including statements to be issued as Far North policy statements; and

“(b) advising the minister on matters related to the development, implementation and co-ordination of land use planning in the Far North in accordance with this act, including,

“(i) the allocation of funding to support First Nations working with Ontario on that land use planning, and

“(ii) appropriate dispute resolution processes for land use planning matters under this act.

“Establishment of body

“(5) If the First Nations that participate in the discussions and the minister agree to establish the joint body, the minister shall,

“(a) take into account the discussions and establish the joint body in accordance with subsection (6); and

“(b) ensure that the instrument establishing the body sets out the functions of the body consistent with subsection (4).

“Composition

“(6) The joint body shall be composed of the following in equal numbers:

“1. Persons, each of whom is a member of a First Nation.

“2. Persons, each of whom is an official of the government of Ontario.

“Far North policy statements

“(7) If the joint body recommends a statement to the minister under clause (4)(a), the minister shall submit the statement to the Lieutenant Governor in Council and, with the approval of the Lieutenant Governor in Council, issue the statement as a Far North policy statement if the minister is of the opinion that the statement takes into account the objectives set out in section 6 and if the statement relates to any of the following matters:

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“1. Cultural and heritage values.

“2. Ecological systems, processes and functions, including considerations for cumulative effects and for climate change adaptation and mitigation.

“3. The interconnectedness of protected areas.

“4. Biological diversity.

“5. Areas of natural resource value for potential economic development.

“6. Electricity transmission, roads and other infrastructure.

“7. Tourism.

“8. Other matters that are relevant to land use planning under this act if the minister and the joint body agree to the matters.

“Non-application of Environmental Assessment Act

“(8) For greater certainty, the Far North policy statements are not undertakings as defined in the Environmental Assessment Act.

“Posting on the Internet

“(9) Upon issuing a Far North land use policy statement, the minister shall post it on the government of Ontario site on the Internet.

“Amendment

“(10) At least every 10 years after issuing a Far North policy statement, the minister shall request the joint body to advise the minister whether it is necessary to amend it.

“Process for amendment

“(11) The joint body may recommend to the minister amending a Far North policy statement and subsections (7), (8) and (9) apply to the amendment with necessary modifications.”

The Acting Chair (Mr. Shafiq Qaadri): Are there any further comments? Ms. Jeffrey.

Hon. Linda Jeffrey: I realize this covers a lot of ground, and I think it answers some questions you asked, Mr. Bisson, at the first point.

Through our outreach last fall, NAN asked that the bill include reference to First Nations' traditional knowledge. We agree. First Nations' traditional knowledge is extremely important to land use planning, and that's why we're proposing a stand-alone clause that recognizes First Nations' contribution of traditional knowledge to land use planning.

We also respect that such knowledge belongs to each First Nation. This motion leaves the decision about when, where, how and even if they wish to contribute this knowledge in the hands of First Nations.

NAN has also written the province several letters asking that First Nations leadership and understanding of protection be reflected in Bill 191. We support this. This motion would make it clear that First Nations can contribute their perspectives on protection and conservation for land use planning. By working together, we can develop a stronger framework for protection in the Far North, but it will be up to First Nations to decide how, when and if they contribute their perspectives on protection.

Bill 191, if passed, would provide a legislative foundation for First Nations and Ontario to work together to develop new approaches to protected areas in the Far North and would see that these areas are identified through community-based land use planning.

Section 6.2, on the joint body: First Nations have requested that their role in land use planning be extended to all aspects of planning, such as developing the Far North land use strategy. This was reflected in NAN's recent letter to the Premier. The Far North Advisory Council, made up of environmental and industrial stakeholders, including the mining industry, has also recommended the establishment of a joint First Nation-Ontario body to support land use planning in the Far North.

We are listening and responding to input and feedback we have received. While changes to the joint body represent a significant change, one thing remains the same: We continue to require that First Nations and Ontario must discuss and agree on the functions of the joint body before it can be established. In addition, any joint body would have to include equal numbers of First Nations and Ontario government officials. We feel that this approach is respectful of the special relationship between First Nations and Ontario.

This motion is significant because it commits that once the joint body is established, First Nations and Ontario may jointly make recommendations on policy direction, through policy statements and other components of the Far North land use strategy. They may also discuss and advise on appropriate dispute resolution processes, as well as on the allocation of funding to support planning.

Subsection 6.2(7) responds to scientific and environmental stakeholders who requested a commitment to consider both climate change adaptation and mitigation as well as cumulative effects.

Agreeing on and establishing a joint First Nations and Ontario body to support land use planning in the Far North is an opportunity to make significant progress on land use planning, which is something I think we all support. Local planning will continue to be done with interested First Nations. The process for preparing a community land use plan will remain at the community level.

The Acting Chair (Mr. Shafiq Qaadri): Mr. Bisson?

Mr. Gilles Bisson: I have a question, Minister. What would happen under this bill, if passed along with your amendments, if a community decided not to implement a land use plan? How would you deal with development?

Hon. Linda Jeffrey: I think what we're telling you is that if a community decides they don't want to do a land use plan and they're approached by somebody who wants to develop, they won't be developing in that community.

Mr. Gilles Bisson: Hence back to my point, which is that we essentially have a regime being set out in Bill 191 that says, "If you want any development to happen, you're going to have to develop a land use plan." That's what you've confirmed, which goes to my first point: Who's driving the process?

The second part is that as I go through this section—and again, I recognize that the government is trying to respond to some of the issues that were raised by NAN and others. But as I read this, you're boss of the beaver. And I use that term—just so people know what I'm talking about, in Cree there's no such term as "Minister of Natural Resources." They pointed out to the minister on Thursday that the closest title they have to "Minister of Natural Resources" in Cree is either "boss of the beaver" or "boss of the muskrat"—I'm not sure.

Hon. Linda Jeffrey: Beaver.

Mr. Gilles Bisson: It's beaver, okay.

My point is, I read this particular amendment, which is three pages long—and I'm going to go through it later—and is it not the case that at the end of the day, if you're a First Nation and you're a community that wants development, you're going to have to do a land use plan? This particular section sets out how that is to be done, by which at the end of the day it's the minister who has the final say. Isn't that what this says, in the end?

Hon. Linda Jeffrey: I'll try to answer the question, but I'm being scribbled messages.

Mr. Gilles Bisson: Well, read it before you answer. I always find, trying to speak and read at the same time, I

can't do it, so I don't think you can either. Take your time.

Hon. Linda Jeffrey: Answering your question of who's driving the process, First Nations are. They're going to determine whether or not they want to do a land use plan. I think later on we deal with the developments in another government motion—because I know you're excited to know what the next group of motions are.

There are already communities that have land development projects in place, and they're concerned that this Far North Act will slow them down. It won't, and we will allow some interim development to occur while there's a draft plan in place. So we're trying to be flexible and accommodate the concerns that were raised with us in the First Nations communities I visited and that have written to us about this legislation.

I think at the end of the day, we're trying to find a model that works for each community. Not every community is ready to do land use planning. Some are just beginning and some are at the far end of the process, but they're all trying to find what they can do best in their community to bring education, capacity and skills training to their community. Land use planning is one of those ways that we can provide, as a government, the dollars to a community to give some of their youth jobs and opportunity.

Mr. Gilles Bisson: I think we agree with the ultimate aim, but as I read this section—it says "joint body." First of all, 6.1 says, "First Nations may contribute their traditional knowledge and perspectives," which is fine. Then it reads,

"Joint body

"6.2(1) Any First Nation having one or more reserves in the Far North and any First Nation with whom the minister has agreed to work to prepare terms of reference under subsection 8(2) may indicate an interest to the minister to initiate discussions with respect to establishing a joint body...."

So to my first point, if you don't get into land use planning you get no development.

My second point is, I read 8(2) and it says, "The minister and one or more First Nations not having a reserve in the Far North that indicate to the minister their interest in initiating the planning process by preparing the terms of reference may agree to work with each other, in addition to working with the First Nations under subsection (1), to prepare the terms of reference." As I read all of this—and I don't want to read it again, because it's long—the effect is that you drive the process. You have to agree with what the terms of reference are, and you have to agree in the end to what the final plan is. That's the way I read this.

Hon. Linda Jeffrey: At the end of the day, the First Nations, if this legislation is passed, will drive the process, and they will have to determine whether or not they want—

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Mr. Gilles Bisson: You will initiate.

Hon. Linda Jeffrey: They will initiate the process, and they will have final approval on the community land-based plan that they put in place.

I think that it is hard to understand because it is novel, it's historic and it's a different way of doing land use planning. Certainly every community will be determining whether or not they want to move forward.

Some communities need to work with each other. For example, if you were in the Ring of Fire, there are four or five communities that all have different needs to accommodate how that mining exploration will happen and the kinds of services they will need around that property. They need to work together. We're going to work with them, but in order for them to come to the Ministry of Natural Resources to get land use planning dollars, they have to develop terms of reference. They will be the ones who initiate that process.

Mr. Gilles Bisson: I agree that it's the First Nations that initiate, but my point is that they don't drive it. I read this under subsection (7):

"Far North policy statements

"(7) If the joint body recommends a statement to the minister under clause (4)(a)"—and it spells out what the various principles are—"the minister shall submit the statement to the Lieutenant Governor in Council and, with the approval of the Lieutenant Governor in Council,"—in other words, with the approval of cabinet, right?"—"issue the statement as a Far North policy statement if the minister is of the opinion that the statement takes into account the" following objectives.

At the end of the day, you may not initiate, but you certainly determine what's going to be the end result, based on the principles that are set out in the bill and the power that cabinet reserves for itself to approve whatever is done in being consistent with the act—to the point that my friends in the First Nations make about who, in the end, is in the driver's seat? Who's going to be the boss of the beaver?

Hon. Linda Jeffrey: We're going to have to agree to disagree. The First Nations initiate; they will carry out the land use planning and will determine definitions as to what's protected in their communities. When they have decided that they are finished and they have done all the consultation they want to do in their own community and come back with a recommendation, they have final approval.

Mr. Gilles Bisson: Okay, we're going to agree to disagree, but I'm of the mind, as I read this and other sections of the bill, that you're in the driver's seat. I don't mean you personally; you're not a bad person. That's not what this is all about. But it's clear, the way I read it, that if, for whatever reason, a First Nation decides, just under policy statements, to try to add something that's outside of what is stated as far as the principles, or omit, it wouldn't be approved, which means to say that at the end of the day you drive the process.

Then you've got the amendments, and I understand why this is done under (10): "At least every 10 years after issuing a Far North policy statement"—we're just

talking about the policy statements; we're not talking about the plans—"the minister shall request the joint body to advise the minister whether it is necessary to amend it." So you can actually start it up all over again on the policy. If, let's say, this joint body decides to create a policy that says whatever, and you're all well-intentioned—and you're going to give me a chance to read this. You're going to respond so I can read after, right?

My point is, this joint body gets together, they develop a policy—the provincial policy, as we call it—on planning in the Far North—what the values are etc., that are stated in this section. In 10 years' time, there's a review process, which I understand; that's typical of most legislation. But you're the one, at the end of the day, who is going to decide whether it's necessary to amend it or not. That's how that reads. It's pretty clear in the language, right?

The Acting Chair (Mr. Shafiq Qaadri): Thank you, Mr. Bisson. Ms. Jeffrey now.

Hon. Linda Jeffrey: There are a number of things that will—the devil will be in the details as to how this blends in the future, but we believe that this is a very innovative process in that First Nations and Ontario will be a joint body, providing advice as to how we proceed in the future.

I heard, when I travelled up north—different communities felt that one joint body was the right answer; others felt that more than one joint body was the right answer. I believe that we've made this legislation flexible enough to accommodate those kinds of requests so that we can provide the best overarching group that looks at all the plans and makes sure that they work together and that they knit the plans together properly.

I understand that there is discomfort with the language. We're doing something new, something different, that has never been done before, and it's based on the conversations we had with the First Nations communities. We want to treat First Nations communities like a partners, because they are. We need to both work on getting economic development, growth and conservation under control together. This is how we believe we can move forward on those goals to provide boreal protection as well as economic development.

It's going to be a balancing act, but we think that if we have partnership from First Nations as well as Ontario, we'll achieve that goal.

Mr. Gilles Bisson: I know Mr. Randy Hillier wants to get in. I just want to say quickly that what the First Nations were pushing for was an independent body, not a joint body. I take it you know that that's what was being asked for, not a joint body.

Because of the historical relationship of MNR and First Nations—I don't want to portray it that the MNR is bad or anything, but it has not been spot-on—let's just put it that way—when it comes to disputes between the MNR and First Nations. What First Nations were pushing for was an independent body to deal with this. This section here doesn't even deal with the issue of, how do

you protect that traditional knowledge? Because some of this stuff, the data sharing, as far as what goes into the database under traditional knowledge—I know because it has been raised by me; I know in Marten Falls for sure it was raised with me by Chief Elijah Moonias; it was raised with me in Kashechewan with the land use planning person in Kash—I forget the name now—Harry, I think it is? What was raised as well is that there's a real worry about how that information, that database, is going to be shared, because some of the stuff in there are not things they want shared with the world. We can get into a conversation about that one later.

I just want to say for the record that what this section does is not what they asked. They asked for an independent body.

The Acting Chair (Mr. Shafiq Qaadri): Mr. Hillier.

Mr. Randy Hillier: Thank you very much. I've been so patient and tolerant for that long exchange.

I have to say that it's interesting to see a three-page amendment to a four-paragraph clause in Bill 191 with this amendment. The minister has said that the First Nations are in the driver's seat on Bill 191. That's what she said. But when you look at the implementation and you look at what is obligated here in the minister's statements, if the First Nations community does not have a land use plan, they get no money. So the default position is, "No development if you don't agree with the government. But the First Nations are in the driver's seat. You get no money if you don't do the plan the way we like. You get no money. But the First Nations are in the driver's seat. If you don't do the terms of reference the way the government wants, you get no money. But the First Nations are in the driver's seat."

Who's driving the process? We're not naive here. We know that what drives is money. Who's got their hands on the purse strings? The government. Who's driving Bill 191? Well, I'm not sure who's driving Bill 191, but I know it's not the First Nations. It's not the First Nations who have driven Bill 191. It may be somebody else, but it's not the First Nations. Who's going to drive the implementation of it? It's not the First Nations; it's this government, or some government will be and is the driver for Bill 191 and the land use planning.

There's no question about it, Minister. You're in control of the purse strings. If things are not done in the manner, in the fashion, that is agreeable and acceptable to the bureaucracy in the MNR and yourself, you withhold the money. You are not only the driver; you also have the foot on the brake because you're saying, "No development if you don't agree with our plan."

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I'll put this thought forward: As it's indicated in the legislation, a quarter-million square kilometres of land are going to be off limits. It's going to be interconnected and it's going to be off limits. So if a First Nations community does develop a land use plan and it does not prescribe the amount of protected land that the MNR desires, is that plan going to be approved? Will that plan be approved if all these land use plans fall short of your

quarter-million square kilometres of interconnected protected land? How will you deal with that, Minister? Because you know, the way the legislation is written, you would be in violation of the law if you don't protect that land.

That one question, if you could answer that: What will you do if you fall short on your quarter-million square kilometres, if the communities in the north don't subscribe to your predetermined targets?

The Acting Chair (Mr. Shafiq Qaadri): Ms. Jeffrey?

Hon. Linda Jeffrey: I'm really encouraged by the conversation that we're having today, because we're really talking about the meat and potatoes of the bill. It is encouraging, because we've been working on this for quite some time, and it's good to have this conversation.

We're talking about an area that's about 41% of the province, so it's a very large area to be discussing. We're talking about a vision for the Far North that is quite historic. It's different, it's unique and it's one where Ontario and First Nations are going to work together to make better and wise land use decisions in the Far North. That's going to address the social and economic as well as the environmental interests of First Nations and the province.

Mr. Bisson, you stated earlier that the province sets the broad framework to support the planning process across the Far North. We're taking that concept a little bit further by having a joint First Nations-Ontario body. We're going to recommend broad statements and policies, but we also realize that the government has a responsibility or an obligation to the province as a whole, so we're trying to convey that in the body of what we're talking about.

Interjection.

Hon. Linda Jeffrey: Mr. Hillier, you talked about us driving the car. We have a responsibility as government to watch how funds are spent around the province. There are public tax dollars, and at the end of the day we need terms of reference from a First Nations community to determine what kind of work plan they have. As long as they have a work plan that supports the work they're going to do, we may be able to enhance it or better guide it so that if you haven't done a land use plan before—for some communities, this is the first time they've ever done work like this, and it is a land use plan that looks so different from anything you could possibly see around the province.

I've looked at land use plans in the south. They are nowhere near what they are in the north. Up north, they show burial sites. They show spawning grounds. They show special ceremonial spaces in the community. They show habitat for all kinds of creatures that are in their particular area. It is a beautiful, living, breathing document and, more than a document does in the south, it shows the past, the present and the future. It is a document that provides a way to capture what the elders tell First Nations communities, because, unfortunately, time is our enemy and we lose our elders over time. They're quickly trying to get that information from their

elders and trying to capture those conversations that describe the use that goes on in their communities. This, I believe, is a way to make that unique knowledge, that oral tradition that First Nations have, be captured for all time in a document that reflects what the community wants.

Again, it's up to the community to decide whether they want to, and they may decide not to move forward. It's going to depend on who comes into their community and wants to do business with that chief and that tribal council. We won't be able to determine that, and it will be up to them to initiate it.

The Acting Chair (Mr. Shafiq Qaadri): Mr. Hillier?

Mr. Randy Hillier: Again, I had a question that didn't get answered there.

I also talked, in response to your comments, about who was driving this. Clearly, it is the government that is driving this. You have the control of the purse strings. Of course you have an obligation. Some might disagree that you've been respectful guardians of the public purse, but I won't get into that in this one. Clearly, you do have an obligation for the public purse.

You stated that First Nations are the drivers of the land use plans, and that clearly is not correct. Clearly, it is the government that holds its hand on the wheel, and you've put the brake on. If you don't agree with your land use plan or the terms of reference, you get no development. You are the drivers of this.

You mentioned also this partnership, but we've seen what the partnership is with these committee hearings that didn't happen. My question to you, Minister, is what will happen if the land use plans fall short of your prescribed quarter-million square kilometres? What will happen? What will you do? What are the obligations of the Ministry of Natural Resources? What consequence will there be for our First Nations if there is a shortage in those prescribed targets? Will you say to Grand Chief Stan Beaudy, will you say to NAN, will you say to them all, "Guys, you haven't protected enough property yet. Go back to the drawing board and come back so that your plan meets the legislation that's been adopted"? That is the question. What will you do if your vision for the north doesn't coincide with the vision of the people who live in the north?

The Acting Chair (Mr. Shafiq Qaadri): Ms. Jeffrey.

Hon. Linda Jeffrey: Thank you, Mr. Hillier, for your question. I guess it would be not wise of me to speculate what would happen in the future, but we believe we have an objective that's flexible, and we have the flexibility to approve plans that are more or less than 50% in a plan that comes forward.

But I guess what I learned this summer when I was travelling to talk to First Nations communities—and I think Mr. Bisson talked about it earlier—is how First Nations feel about the land. In the south, you just don't understand it until you hear them talk about it. I always had respect for First Nations, but it's just been enhanced. If you don't have the land, you have nothing. The land is their life, and how important it is. It's their supermarket,

it's their grocery store, it's their pharmacy, it's everything, and I understand that. I think that, certainly, I learned in my conversations with virtually every community that they felt they were going to be better stewards of the land than the Ontario government. In fact, they wanted to protect more land.

I don't disagree with them. I think that they've already been good stewards of the land. I think it's a projection, it's a target that we would like to reach. I think, in fact, we will probably exceed it, based on the conversations I've had with First Nations. They've already demonstrated their desire to protect lands. They already have some ideas about what those definitions would look like, and I'm happy to work with them. This is just the beginning of that conversation.

The Acting Chair (Mr. Shafiq Qaadri): Thank you.

Mr. Randy Hillier: But that is not a soft target, and I see no mechanism in here that says we can change that if we want, that we can disregard the legislation if we want. This is a legal document that people must adhere to or else—guess what?—people end up in court when they break the law. What is your mechanism in here because it's not a soft target? What is your mechanism to allow that to be amended, except in another 10 years?

The Acting Chair (Mr. Shafiq Qaadri): Let me pass to it to Mr. Arthurs, and then the floor is open.

Mr. Wayne Arthurs: Just a procedural question more than a point of order: Under our operations today, I presume we finish at 6 under the time allocation motion. Is that correct?

The Acting Chair (Mr. Shafiq Qaadri): We finish at 6, but we'd do that in any case.

Mr. Wayne Arthurs: Regardless. Okay. And we're working by that clock, I presume, or something close?

The Acting Chair (Mr. Shafiq Qaadri): It's 5:38.

Mr. Wayne Arthurs: So if this debate on this particular amendment, which has been going on for about half an hour now, goes another three minutes, and if someone were to ask for a 20-minute recess before the vote, there wouldn't be a vote on this amendment?

The Acting Chair (Mr. Shafiq Qaadri): Not today.

Mr. Wayne Arthurs: So the vote would occur the next time the committee met?

The Acting Chair (Mr. Shafiq Qaadri): Correct.

Mr. Wayne Arthurs: Thank you.

The Acting Chair (Mr. Shafiq Qaadri): Thank you, Mr. Arthurs. Ms. Jeffrey, and then who would like the floor?

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Hon. Linda Jeffrey: Mr. Chair, could I ask one of the lawyers to come up? Would that help Mr. Hillier with the explanation as to how this target will be met?

The Acting Chair (Mr. Shafiq Qaadri): Certainly. Welcome.

Ms. Sheila Ritson-Bennett: Sheila Ritson-Bennett, counsel for MNR. Just as a point of clarification, this is not in fact a target; it's an objective of the bill. Legislative counsel may want to weigh in on this. But just to

be clear, it's an objective of the act and it's to be taken with the other three objectives together.

Mr. Randy Hillier: But it's still stated that there will be a quarter-million square kilometres of land protected; right?

Ms. Sheila Ritson-Bennett: It's an objective, but it's not a target in the sense that you may be speaking about.

Mr. Randy Hillier: Well, maybe in your legal terminology you'll explain the difference between a target and an objective.

Ms. Sheila Ritson-Bennett: The target would be—

Interjection.

Ms. Sheila Ritson-Bennett: It's says "at least 225,000...."

Mr. Randy Hillier: Yes, "at least."

Ms. Sheila Ritson-Bennett: But the way it's written, it's not described as the target, as you're describing it.

Mr. Randy Hillier: What difference does your statement make to the discussion? My question was, what would happen if you fail to meet your target? I'll change it to "objective"—what is prescribed in the legislation. What will happen then?

Mr. Michael Wood: Michael Wood, legislative counsel. As counsel for MNR indicated, you have to look at the context. I believe that every time there is a mention in the bill of objectives set out in section 6, the words "take into account" are used, so that would describe what the obligation is. It would be up to a court ultimately to determine how reasonable you have been in taking into account the obligation, but as far as I know—and we could double-check with MNR legal counsel—I don't think there is anything that requires the minister under all circumstances to meet this target, and it certainly doesn't set out any sanctions if the target is not met.

Mr. Gilles Bisson: Okay. Just a very quick question on his point: Then why do we have section 6, paragraph 2 of the act say, "The protection of areas of cultural value in the Far North and the protection of ecological systems in the Far North by including at least 225,000 square kilometres ..."? The words are "at least." That tells me there's a minimum. I think that's the point that Mr. Hillier was trying to make. You have to have regard to what it says in section 6 under land use planning.

Mr. Michael Wood: You certainly have to have regard to it and take into account that that's the minimum target or objective that you have, but there is nothing that forces you to meet that and nothing that sets out a sanction or what happens if you don't meet that, just that you have to take that into account as an objective.

Mr. Gilles Bisson: And hence why First Nations are so uncomfortable with this: It's exactly the discussion that we're having now. There are like three interpretations as to what section 6 really means: Is it a minimum of 225,000 square kilometres? Is it a principle?

Imagine what's going to happen when MNR gets a hold on this bill and we're having discussions with First Nations. No disrespect to my friends at MNR. You're trying to do the best you can, but you're going to have your interpretations based on what you believe is in the

bill, and we're going to end up litigating this thing in lickety-split time, I would think.

Mr. Randy Hillier: I'd just add this: I've met and dealt with many people in the bureaucracy, and when they see a clause that says "at least 225,000 square kilometres will be protected," I know how they're going to respond to that, and it's not going to be a sensible, reasonable discussion. It will be, "The law says." I would say to Mr. Wood, the counsel, that this also opens up, I would submit, that if the MNR does not meet its minimum target or objective, then the MNR will be open to court actions by those groups, those associations and those people in Ontario who want to see a quarter-million square kilometres of land protected. They will be able to go to court and they will say, "The MNR has failed the legislation. They've only got 200,000 square kilometres of land protected, and 50,000 aren't interconnected." The court will rule because this is what the law says.

The Acting Chair (Mr. Shafiq Qaadri): Mr. Bisson.

Mr. Gilles Bisson: To get off that point—but I think you make a good point, Mr. Hillier. The point is that when all of this is done and it's passed into law, should it be passed into law—and I hope not, in its present format—there are going to be all kinds of various interpretations as to what is meant and what is desired, both by the MNR and First Nations, and hence we're going to end up in that area.

I just want to come back to what the minister said initially, and that was that they've been good stewards of the land for millennia. As far as I know, the Far North, the area where 49 First Nations reside, is one of the only pieces of land in Canada outside of the territories where it's predominantly only 98% First Nations. If they've done such a great job in being stewards of the land, why are we afraid to give them control?

I understand your argument. You're saying we need to watch out for the interests of the province. I think that First Nations are perfectly capable of developing a good land use plan. Yes, the province has to give principles—I don't disagree with you; if I was minister, I certainly would want to give some principles as well—but I think what should be done is that the crown—in this case, the province of Ontario—should set out what those principles are that you want and allow First Nations to go out and to start working at being able to develop what would be the backbone for the legislation. That's my first point.

Second point, and I have a question to the minister: How much money is actually earmarked in order to develop the land use plans? There was \$10 million that you announced the other day in Timmins, and how much before that?

Hon. Linda Jeffrey: There's a variety of dollars available through other ministries.

Mr. Gilles Bisson: Ballpark? I'm just trying to remember. Does anybody at the MNR?

Hon. Linda Jeffrey: It depends. You'd have to kind of add the dollars together from MNR and MNDM.

Mr. Gilles Bisson: Let me ask the question the inverse way: How much do you think it's going to cost First Nations, all 49 of them, to develop their land use

plans? And do we have enough money to make it happen? Hence, to the problem that we've got here: We're asking First Nations if they want to develop land use plans, and I don't believe that the capacity has been provided to even get there. So we're already starting off in the starting blocks from a position that's pretty disadvantaged.

Hon. Linda Jeffrey: He has asked a lot of questions, Mr. Chair. I'll attempt to try and answer a couple of them.

Why are we doing this? Because it's the right thing to do and because there's an economic wave coming over the north. Certainly the Ring of Fire is one that everybody knows about, but there are a lot of other economic opportunities. Whether it's hydro transmission, forestry—there are lots of other opportunities in the Far North that are certainly coming on the horizon, and First Nations communities are being approached to enter into agreements. So that's why we're doing it. But before those opportunities are seized upon, you've got to decide as a community, where do you want that development to occur and where is the no-go zone? So that's why you need that kind of land use planning.

What was the second question?

Mr. Gilles Bisson: How much money do you think it's going to cost?

Hon. Linda Jeffrey: Oh yeah, money; sorry. At the end of the day, every community that has come to the Ministry of Natural Resources in the Far North that wants to do land use planning has received dollars. There has been great uptake, and back in March we had about 28 communities that came forward and did land use planning. So they're eager to do it; they're enthusiastic about learning about the process.

The recent dollars that we announced last week were extraordinarily difficult to assemble but necessary. At the end of the day, how much money will it take? There are so many communities in the Far North that are not quite ready to do the work, so if you had more money than we have currently, I don't think there's capacity yet in First Nations communities for everybody to start land use planning, nor do they want to.

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I believe the \$10 million is a wonderful first start. I'm not sure every community will be able to do the uptake, nor do they have the development pressure on their doorstep to make those decisions yet. Some communities are at the front line and have to start making decisions soon. Any of the communities surrounding the Ring of Fire are in that position and need to work together and have a plan so that they can deal with all of the pressures that are on their community. There are other communities that are facing the same kinds of pressures, but we will work with any community that comes forward with a land use plan and we will assist them. As I said, some are further along in their development of a land use plan than others; some are just at the beginning stages.

Mr. Randy Hillier: I guess the member for Pickering's crystal ball was not working quite as well. We went past that two minutes.

I would like to address this to the minister. You said that the reason why you're doing this bill is that it's the right thing to do. Every chamber of commerce in the north is opposed to Bill 191. Every First Nations community in the north is opposed to Bill 191. Every mayor in northern Ontario is opposed to Bill 191. And you have the gall to say that this is the right thing to do. How can you make such a comment when there is such outrage and opposition from every quarter in the north that it is the wrong thing to be doing, that the whole process has been wrong, everything from creating legislation and then doing dialogue, by not upholding commitments to have public consultations? Every industry group, every business group, every municipality and every First Nation has clearly expressed opposition to Bill 191. It's the wrong thing to do, Minister, not the right thing to do.

What we're here to do is to listen to people who are affected by legislation and make sure that the legislation is amenable to them, not antagonistic to them.

Hon. Linda Jeffrey: I don't want to get into too much of a debate, but at the end of the day, I think all chambers of commerce support development in the sense that they want jobs. I think every mayor in northern Ontario wants jobs. They want opportunity. There isn't a First Nations community that doesn't want jobs and opportunity. I think they want education; I think they want skills development; I think they want to address the poverty; they want to address the lack of hope that exists in some Far North communities.

I think that's what this is about. This is about providing a different way of thinking. I realize we are on very unusual ground right now. We're proposing something very unusual and unique that's a different kind of relationship, and it's going to take some pretty brave leadership to move forward on this, but there are some very clever people in the north who I think are ready and able to take on the challenge of economic development, and we're going to give them the tools to do it.

The Acting Chair (Mr. Shafiq Qaadri): Monsieur Bisson.

Mr. Gilles Bisson: To Mr. Hillier's point: I'm going to be a little bit softer but to the same point. All of the leaders in northern Ontario are telling you not to do this, not because they're opposed to the principle—because you're right; nobody is opposed to the principle. I don't know of any mayor, any councillor, any chamber of commerce or any First Nations opposed to the principle. That's not the point. What they're saying is that we don't have it right.

Is that a failure on the part of your government? Some people may categorize it that way, but I think that any good government and any good leader at one point should be in a position to say, "Okay, maybe we didn't get it right. Let's go back and try it again." If it takes a little bit longer and if it doesn't happen in this session of Parliament, so be it. The diamonds have been in the ground for thousands of years; the trees have been growing every 100-year cycle; the water has been running for millennia. It will still all be there; it's not going to go anywhere. And do you know what? Development will

still happen. We didn't develop the De Beers diamond mine, we didn't develop the Detour Lake gold mine that we're developing, we didn't do any of that stuff under the far north planning act. We did that by, quite frankly, having no policy and the First Nations doing a whole bunch of work in order to protect their interests. They know what needs to be done to protect their interests.

So I just say that sometimes it's good to take a step back and say, "You know what? We hear you. We still think we're doing the right thing as far as where we want to go." I think everybody will agree with you, but I think we need to take a step back and look at it.

To my earlier point that I was trying to get back on the agenda for, which is the issue of resourcing: I hear you, Minister. You're saying that there are a whole bunch of communities out there that are eager, willing and able—to a degree—to do land use planning. "Willing and eager"? Absolutely. I don't think there's a question. But "able" is a whole other issue, and I say that with all respect to my friends who are here. There isn't the capacity in a lot of these communities, in the majority of these communities, that deal with this. What do I as a provincial member of Parliament, let alone the chief of the community or the land use planning person in the community, know about planning principles and how you write an official plan? These are things that take a fair amount of time to learn, and you've got to bring people, sometimes, from outside to help you with this. The city of Timmins, like in Burlington, didn't write their official plan by locking themselves in a room. It costs a lot of money. They brought people in and they developed official plans accordingly.

My point is this: They're not properly resourced. I spoke to the land use planning people in Marten Falls, in Peawanuck, in Kashechewan and other communities. They're all saying that they don't have the budget to do what needs to be done. They're trying hard, but they don't have the money to do what needs to be done. So that's why I asked you the question earlier and said, "Listen, how much money do you think it's actually going to take to get this done, and do we have enough money?" I think the answer is that we probably don't know how much money it's going to take at this point. I think it's a little bit early to tell, because it's a bit of a moving target depending on what the final legislation is and where we go. But the fact is, all communities in the Far North eventually are going to have a land use plan, and we better be willing to fund it.

I end on this point: If it takes four or five years, if it takes 10 years, so be it. That's my view. I don't think we should be so rushed to try to foist a system of land use planning onto First Nations where we think, "Well, jeez, this is a great victory. Look at this. We've done it," if they're not prepared to accept it, because what you're going to have is resentful First Nations who are going to have a system imposed on them that they're not going to

want. Different communities will deal with that differently, and I'll tell you, it's not going to add to the ability to raise capital in the Far North, because if there's uncertainty because some communities are acting out in whatever way—and I'm not condoning it, but I'm saying it's going to happen—it's not going to serve anybody's interests.

So I just say that I really hope that the minister goes away today, based on the conversation we had earlier in regards to the amendment I put forward, to look at whether there's a way of stepping back, taking a bit of a breather here and looking at where we go from here. I don't think we should try to hang our hat on the coat peg, in the sense of saying, "Boy, we got that one figured out." I think we have to allow First Nations to figure it out, because you know what? They've been there for thousands of years, and hopefully for another thousand years they will be there. It should be up to them to determine. Being that 99% or 98% of the people who live in the Far North are First Nations people, we should put them in the driver's seat.

The Acting Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier?

Mr. Randy Hillier: I just want to say that I absolutely concur with Mr. Bisson that good government takes a step back when there are clearly failings and such significant opposition, but I guess I would add to Mr. Bisson's comments. About three or four or five years, I don't imagine Monte Hummel and the World Wildlife Fund want to wait that long to create the world's largest park in northern Ontario.

The Acting Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. Ms. Jeffrey, your closing comments?

Hon. Linda Jeffrey: Thank you so much, Chair. I'm glad to have the final word.

I guess, Mr. Bisson, you're right: There is a capacity issue in the north, and certainly funding was an issue I heard about last year and I heard this year. That's why the \$10 million was such a great thing to have assembled, and it was something that I was very pleased to bring to my speech when I went up to Timmins.

I would say that there are communities out there that have been working on it for eight to 10 years. I think Pikangikum is one of those communities that's worked very hard. They're kind of coming to the final end of all of their community consultations about what the plan should look like. Those communities want to move forward.

So I agree with you, capacity is always an issue, and we want to work with those communities to help them. That's what my staff at MNR do. We do it well and we've got great people in the north to work with.

The Acting Chair (Mr. Shafiq Qaadri): I will close the debate. Committee is adjourned until 4 p.m. I thank you for your patience.

The committee adjourned at 1800.

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Mr. William Short

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Second Session, 39th Parliament

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(Hansard)**

Wednesday 15 September 2010

**Journal
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Mercredi 15 septembre 2010

**Standing Committee on
General Government**

Far North Act, 2010

**Comité permanent des
affaires gouvernementales**

Loi de 2010 sur le Grand Nord

Chair: David Orazietti
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENT

Wednesday 15 September 2010

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Mercredi 15 septembre 2010

The committee met at 1627 in room 228.

SUBCOMMITTEE REPORT

The Vice-Chair (Ms. Helena Jaczek): I'd like to welcome everyone. Ladies and gentlemen, this is the Standing Committee on General Government. There is a live feed in the room next door. If anyone is uncomfortable standing, you can certainly move there and hear the entire proceedings.

We are going to resume debate on the amendment to the report of the subcommittee. Monsieur Bisson, would you like to read your amendment again?

Mr. Gilles Bisson: Thank you, Madam Chair. I'd like to read the amendment and just give a bit of an explanation. The amendment is number 12: "That the committee send correspondence to the House leaders requesting that Bill 191, the Far North Act, 2010, not be called for third reading until such time as a process of consultation and consent has been agreed to by the First Nation communities and the government."

The Vice-Chair (Ms. Helena Jaczek): Further debate?

Mr. Gilles Bisson: Well, it's pretty straightforward. As I was saying on Monday, it's pretty clear, if you look at who supports the legislation and who doesn't. Who doesn't is here. It's all those communities that are in the Far North, it's the chambers of commerce from north-eastern and northwestern Ontario, it's the municipalities from across the area that have been saying, "This particular act doesn't cut it." First Nations want to have a land use planning process. They want development on their territories, but there needs to be legislation that meets with their approval. In the end, there needs to be some sort of a consent mechanism to development.

It is the feeling, and quite frankly it's my belief as well, that the amendments, as proposed by the government, don't meet that threshold. If we look at the legislation, at the end of the day, it doesn't respect the first premise of First Nations, which is that they want a process that will protect them when it comes to making sure that they have a mechanism of consent when it comes to development in the Far North.

The second part is that, at the end of the day, even though the government has tried to make some steps forward to deal with the issue of who really is in control and who has the final approval, it's pretty clear when you

read the legislation that, yes, the government has amended it so that the First Nations have an approval process. But at the same time, so does the minister, as it reads in the amendments and in the current legislation, the parts that are not amended.

Clearly, First Nations are saying that this is not acceptable. I move this particular motion in the hope that we're sort of throwing—how would I say?—an offer to the government, or a bit of a life jacket. We're saying, "Listen, nobody in the Far North, the municipalities, the chambers of commerce, the mining industry or the environmentalists who live in northern Ontario is saying we can't have a planning act, but clearly this act doesn't meet the threshold."

So we're asking the government and we're giving them a way out, saying, "Don't call this at third reading. Allow a process by mutual consent between First Nations and the government to go back to the drawing board to look at how we can do this in such a way that meets with the approval of the First Nations, that ensures that in fact development can happen, that it's done in an environmentally sensitive way so that we do not damage the environment in whatever happens and that First Nations are able in the end to benefit from the activities that will happen in their home territories."

It's my hope that the government will support this amendment and, in fact, that the government will not call this bill to third reading.

The Vice-Chair (Ms. Helena Jaczek): Further debate?

Mr. David Oraziotti: Mr. Bisson, while the government appreciates the suggestion and the proposed amendment to the subcommittee report, I think we know how far we have come on this bill over almost two years of discussions around this particular issue and around planning. You yourself acknowledge that land use planning and land use planning development in partnership with our First Nations is a priority. We need to know how we will have development and what type of development we will have. The First Nations that are our partners in this province and have jurisdiction over this territory, who are here today, are the individuals who should be making the decisions around their land use planning.

We are hoping to provide them with the tools and the resources that they need to decide themselves, as band councils and citizens of First Nation communities in the north, how best to plan and develop their communities.

We don't profess to fully understand all of the traditional knowledge and information that First Nations possess, and we recognize that that is a very important contribution to the land use planning process.

As I think you're aware, there are 34 of 38 First Nations in northern Ontario engaged at some level of land use planning with the province at this point. This is already taking place. Land use planning is taking place in the Far North today: 90% of First Nation communities are engaged in land use planning with the province.

We have had in the past number of years, as you know, development issues and challenges with different mining opportunities and other issues that have arisen. We want First Nations to be able to decide how best to plan their communities. That should be their choice. This government understands that very clearly, and this government, unlike past governments, is providing the resources and the tools necessary to help and assist the First Nations to plan their communities in the way that they see fit.

In the last number of years, and as you're aware, we recently committed \$10 million in additional funding directly for First Nations to undertake this land use planning. This is not something that is merely a gesture; this comes with the resources of the province to support First Nations to decide how to best plan their communities. We have invested over \$4 million directly with First Nations so that they can decide how to develop their land use plans. We have spent over \$20 million in recent years on Far North mapping workshops and other endeavours to support the development of land use plans in the Far North. As you are aware, Pikangikum First Nation does have a land use plan in the Far North. It's a success story. It's a great story about land use planning in the Far North.

I think everyone around the table recognizes that it's important to have responsible land use planning, and the people who are best suited to do the land use planning and provide the information and make the decisions around land use planning in the Far North are First Nation communities, because the First Nations live in the Far North. I think we also know that it's important to have some understanding for everyone involved—for Ontarians, for industry, for business and for First Nations—about where development can take place, where it should take place, what areas are perhaps traditional territories of the First Nations that perhaps First Nations don't want development to take place on, and those are decisions that we, as a government, want to work on with the First Nations to ensure they are put in place.

I want to be clear about something else. This bill does not in any way undermine the constitutional and treaty rights of First Nations. Those are paramount in this bill. Those are recognized in the purpose statement of this bill. Let's not twist the premise of this bill or the intent of this bill into something that it isn't, because this bill is to assist and support our First Nations with land use planning.

It does not speak to other jurisdictional issues. There may be other outstanding issues with the federal gov-

ernment perhaps or other related issues, but this bill, through the Ministry of Natural Resources to support land use planning, is to support First Nations. It is subject to all of the higher treaty rights that the First Nations have with the federal government. This does not in any way undermine First Nation treaty rights. It's really important that we need to be clear about that.

I want to say the minister has made considerable effort to reach out, to have discussions, to provide resources for First Nations to discuss the specifics of what is contained in this bill and how we could move forward together as a province to develop responsible land use planning.

Mr. Bisson, I appreciate the suggestion with respect to the subcommittee report, but the government will be voting against the amended report. We'll be voting in favour of the subcommittee report as it was originally drafted. Those are my comments.

The Vice-Chair (Ms. Helena Jaczek): Monsieur Bisson?

Mr. Gilles Bisson: I know Mr. Hillier and others—Mr. Clark—want to get on, but I just want to respond by saying a couple of things. First of all, if you understand that First Nations should be the decision-makers, why is it not in the legislation? Are all of these people wrong? Is every chief and council, every lawyer who works for band council, for tribal council, every municipality, every chamber of commerce, every mining company and everybody else who has had to deal with this legislation wrong, and you're right?

Because in the view of everyone, as they read this legislation—and I've had quite technical discussions with legal counsel in regard to what's in this legislation. The view that you portray is certainly not reflected in this legislation, and I want to make that very clear. That's the understanding of legal counsel who act on behalf of NAN, Mushkegowuk Tribal Council, Matawa, and others whom I've spoken to, who are saying, "No, it doesn't meet that." I just want to be very clear. Those are nice words, and they're appreciated. Certainly, First Nations are a gracious people, they are a people who are prepared to share and to be good hosts, but don't try to placate them by saying that you understand and somehow or other you're all going to make this work, because they're going to have to live with what's in the legislation. What's in the legislation is very different than what you portray.

1640

The second point, in regard to the purpose clause: Yes, it's true, the government of Ontario has put in the purpose clause basically a non-derogation clause which says it should not impose or take away from treaty. But this is one of the points that First Nations are making: What the Supreme Court decision said was there is a duty on the part of the crown to consent but also to accommodate. If you look at the purpose clause, we only speak about consent and basically respecting what is in the Constitution in regard to section 35. We don't deal with the issue of accommodation, and that's central to this debate. That's central to this issue.

First Nations are saying, "I don't want somebody coming in my community, knocking at the door, saying they've talked to me and, somehow, their constitutional obligations have been met." It's also about sitting down, having those discussions to and fro, a bit of give and take, figuring out where we've got to go, and then accommodating what you have heard that has been raised by folks.

That's why First Nations are saying, "Legislation, yes. We want a planning act." The proof is that they've been doing it for a long time. But we need to make sure that we get it right. Putting in place a system that is flawed, that is not going to give the First Nations the comfort that they need, is going to lead, in my view, to unrest that we don't need. It's going to lead to uncertainty when it comes to investment. It's going to be harder to invest in the Far North because there is not going to be certainty around the issues of planning. At the end of the day, that doesn't serve us as a province, and it doesn't serve our citizens or First Nations well.

The other point that I want to make is, you said one of the arguments is that 34 out of 38 communities are engaged in the issue of land use plans already and you need to give them the tools to make the decisions. Clearly, people were already putting together land use plans way before this legislation ever came through. What this does is set the principles and the guidelines that all land use plans will have to follow. That's the other part. First Nations need to make sure that the legislation is going to reflect and give them the ability to have the final say about what happens in their land use plans.

I just want to make this other point: There has been development in the Far North over the years, and it's been done with the blessing and the consent of First Nations. I look at Greg, who is here from Attawapiskat, who was part of the negotiations around the IBA—impact benefit agreement—with De Beers. Here's what's happened: Companies like De Beers, Detour Lake and Ontario Power Generation which have negotiated impact benefit agreements in my ridings with communities from Moose Factory to Attawapiskat have had to do it on their own. The First Nations have always been prepared to have those discussions, but the bottom line is, there needs to be an end product that is going to protect their interests.

So to leave the impression that if we don't pass this legislation there can never be development because it's going to be a hindrance flies in the face of what has already happened. Ontario Power Generation's \$2.7 billion of investment, with an IBA with Moose Cree First Nation to develop the Mattagami River basin, how did they come to that? They didn't send the minister to have a chat with them in their community for half a day. I think there was a series of—who is here from Moose Cree? I think were 20-some-odd meetings that took place between Moose Cree community members and OPG.

There was a discussion to allow not only those people who lived on reserve but those people who lived in Kapuskasing, who lived in Smooth Rock Falls, who lived

in Timmins and were off-reserve First Nations members. In the end, there was a final approval process, and it's a very democratic thing called a referendum. Those communities that have IBAs such as Attawapiskat with De Beers, Moose Cree with OPG and others understand from a First Nation perspective that there needs to be a final approval process by the community. It proves that First Nations are prepared to do what needs to be done. What's lacking here is a partner at the provincial level.

So I say to the government, I am extremely disappointed that you're not taking the offer that has been put forward through me from the First Nations, which is to put this whole process on hold so that we can actually go back and get it right. At the end of the day, I think it's not only a disservice and a disrespect that we give to First Nations; I think it's a disservice, quite frankly, to Ontario. It is not going to add to the certainty that we need in order to attract the type of investment that can be attracted in the Far North.

Last point, because I know Mr. Hillier wants to speak: We speak of the Ring of Fire. Go ahead with this legislation. I want the media to ask the chiefs who are here and those who represent the Ring of Fire communities what that means if this legislation is passed. It's not going to be certainty and it's not going to be good news when it comes to development. They want the development, I want the development, you want the development; all of us in Ontario want that development. Don't hinder it by having this particular bill pass the way it is, because I'm telling you, you're putting it at risk.

The Vice-Chair (Ms. Helena Jaczek): Mr. Hillier.

Mr. Randy Hillier: Thank you. First off, I'd like to welcome all our people from the First Nations communities who are here today, as well as members of the chambers of commerce in northern Ontario. Of course, it's nice to see that the Toronto media are here as well.

After listening to the parliamentary assistant's lengthy and somewhat odiferous oration, I couldn't help but see such similarities between what the parliamentary assistant said and Monte Hummel's press release from the World Wildlife Fund today. I'm sure the member must have Monte Hummel's press release today, because it sounded so much—I'm not sure who's writing whose scripts. I'd like everybody just to, maybe if you get a chance, see the World Wildlife Fund's press release today. It's very similar.

I want to say a couple of things here. First off, there was agreement on Monday to insert this clause. Everybody recognizes that there must be consultations before further reading of this bill, and we were led to believe that there was a willingness on the part of the government to undertake that. It wasn't stated definitively, but it was inferred that there would be that willingness.

It reminds me very much of what happened in June, during a time allocation motion: this atrocious move by the Liberals to arbitrarily impose dates on the First Nations when the Liberals would view it as an appropriate time for them to consult with the First Nations communities. We had agreement in the subcommittee at

that time as well to seek unanimous consent of the House to alter that time frame, but of course, the marching orders came that that would not happen. Obviously, the marching orders came once again since Monday to today. After that lengthy oration by the parliamentary assistant, he finally got to the nuts of it: They're not going to support clause 12 in the subcommittee report. We've seen this in June. We see it now.

I'll make a few comments about this "34 of 38 are engaged in land use planning now." What the member didn't say is that there are no arbitrary, imposed and artificial constraints on those land use plans now being undertaken, as there would be under this bill. Under Bill 191, 225,000 square kilometres of land, of interconnected land, are off limits for First Nations; for everybody in the north. That is a big difference between how land use planning has happened up until now and how it will happen after Bill 191 is proclaimed into law. A quarter of a million square kilometres of land will have no development.

It would have been nice to see the minister here once again, and I have to give credit that the minister was here on Monday for the committee hearing, but if she really had an interest in listening to people and seeking guidance and advice before ramming this legislation through, I think she'd be here again today.

In that meeting on Monday, at the committee meeting on Monday, it was clearly spelled out—and it's still known to everybody here today—that chambers of commerce are all opposed to Bill 191 in the north. All the industry groups are opposed to Bill 191 in the north. All the First Nations are opposed to Bill 191. All the northern mayors and municipalities are opposed to Bill 191, and the minister had the gall to tell this committee that the Liberals got it right with Bill 191. You can't have it right when everybody is opposing this bill, and everybody who is affected by this bill opposes it.

1650

We might say, in some legislation, that if you have some opposition and you have some approval, compromise may have been achieved. There is no compromise on this bill; everybody opposes it. Everybody who lives in the north is compromised by this bill. And to see the parliamentary assistant and the Liberal Party say that on Monday, we thought we could have some process for consent and consultations, and now not—no interest in actually listening to people.

I want to remind the people on this committee: This is a democracy. We in government haven't gone that step so far where we don't listen to people. We have a duty and an obligation to listen and seek their consent, their advice before we impose legislation on them.

This Liberal government—and I heard this parliamentary assistant saying that he's hoping for good things to come out of this. Well, when you see that everybody is opposed to it and you still have hope that they'll come onside, I would say that's nothing more than insanity to suggest hoping for people to come onside when everybody opposes this.

Following up on the member from Timmins–James Bay on this bill, in our discussions on Monday the minister said, "The First Nations will be the drivers." Clearly, nobody bought that story. Nobody bought that story. The Liberal government carries the purse strings. The Liberal government will approve the land use plans, approve the terms of reference, and they hold the purse strings before any money goes out the door. The First Nations are not in the driver's seat on Bill 191; the Liberal government is.

Thank you very much.

The Vice-Chair (Ms. Helena Jaczek): Mr. Clark.

Mr. Steve Clark: Just a couple of minutes. I think Mr. Bisson and Mr. Hillier said it all.

I'm the newest member in the Legislature. I've been here basically six months. I have to pick up on what Mr. Hillier said earlier: There was some hope on Monday. The minister was here; there was a feeling in the room that the government was going to listen. If you look at Thursday, June 3, the very first recommendation in the subcommittee's report was that they go and have hearings. It wasn't the seventh; it wasn't the eighth; it was the very first one. Mr. Bisson's motion that we supported and that we'll support here in a few minutes provided that opportunity for this government to have a climb-down so they could provide the consultation that they deserved.

Mr. Orazietti, the parliamentary assistant, talked about a gesture. Well, I'll tell you something: This gesture's a slap in the face. It's a slap in the face to our First Nation communities, it's a slap in the face to the mayors and the communities in northern Ontario and it's a slap in the face to the chambers of commerce, and I think you should be ashamed of yourself for creating the false hope that happened here on Monday at the committee by having this amendment put forward.

These people stayed around. They're here because they thought there was some hope, that we were going to have some hearings, that it wouldn't go to third reading. I just can't believe, as a new member, that you've led these people down the garden path only to pull the rug out from under them by not supporting this motion. I am ashamed of you.

That's all I have to say.

Applause.

The Vice-Chair (Ms. Helena Jaczek): Order, please. Order.

Mr. Orazietti?

Mr. David Orazietti: I want to focus on what's at hand here: this bill. I certainly don't want to get into debate with the members' record in government with respect to First Nations, because it's dismal at best, and certainly not with respect to their support for First Nations during their time in government. This is something much different in terms of the resources we are providing for First Nations so that they can decide how they develop their land use planning.

Let's be clear about the discussions and the meetings that have taken place. The Standing Committee on General Government, after first reading on the bill, travelled

to the Far North. It is very, very rare for standing committees to ever travel on bills. Many times the hearings will simply be held in Toronto, if at all, and it is even more rare for a standing committee to travel to an area of the province between the first and second reading of the bill. We made a commitment, and we followed through on it, and we did travel.

The minister also, this summer, visited eight Far North communities and met with chiefs and tribal councils, spending days in those communities. The minister has met with over 25 chiefs. Over the last year, the Ministry of Natural Resources staff have held 40 separate outreach sessions on Bill 191.

Every First Nation group that has come forward with respect to wanting to have a land use plan and wanting land use planning resources has been provided resources under our government. No First Nation community that has come forward has been denied the resources they need to help support land use planning in the Far North.

There were outreach sessions held with mayors and councils and municipal leaders in nine different northern Ontario municipalities. The member is clearly wrong when it comes to the position on this legislation. First Nations will have final approval. That's what this is about. The member talks about uncertainty for development. That's what we have right now. We have uncertainty in the Far North around development. We have conflict around development right now.

This is about land use planning and bringing certainty to the Far North, and First Nations will decide for themselves what areas will be developed, what areas will be protected areas and how their land use plans will be developed and shaped. That's what this is about.

So if we want to continue down the same path, without providing resources to First Nations, as was done in the past, and continue to have conflict when it comes to development, then we can simply ignore this issue.

The member opposite says that everyone opposes the bill, but everybody is in favour of land use planning—everyone is in favour of having land use planning. That's what this bill is about. This bill is about land use planning. This bill does not in any way infringe on the constitutional and treaty rights of First Nations in the province of Ontario. Those are paramount, those will continue to be respected, and that is a specific purpose statement in the bill.

Protected areas, to be clear, are not off limits for First Nations. There can be economic development activities in the area, in the proposed 225,000 square kilometres, which is a target to protect the boreal forest. We think the First Nations know best those areas to protect, and they will identify those areas in their land use plans.

I am surprised that the opposition—well, I suppose in some ways perhaps I'm not surprised at the position they have taken, given their past track record when it comes to the lack of support for First Nations. But I know that First Nations communities want clean water, they want good schools, they want health care and they want to participate in the economy. They can decide, and they

have the ability and the resources, through this legislation, to decide how to best plan those communities so that their future generations can have a quality of life that is better than the quality of life that has been the challenge of some First Nations communities in more recent years and in our past. We want to see those First Nations communities succeed, and we want to see those First Nations communities develop those land use plans so that they can decide where it's best for their hospitals, their schools and their economic development to take place. But they decide that, and that's why this bill is important to everyone in Ontario, and especially important to our First Nations partners. Thank you, Chair.

1700

The Vice-Chair (Ms. Helena Jaczek): Further debate? Therefore, we will be voting on the amendment to the report of the subcommittee.

Mr. Gilles Bisson: Recorded vote.

Ayes

Bisson, Clark, Hillier.

Nays

Brown, Carroll, Kular, Oraziotti, Rinaldi.

The Vice-Chair (Ms. Helena Jaczek): That is lost.

Mr. Gilles Bisson: On a point of order, Madam Speaker: I just want to clearly say that this is wrong. The government should not be doing—

The Vice-Chair (Ms. Helena Jaczek): It's not a point of order.

Mr. Gilles Bisson: On a point of order, Madam Speaker—

The Vice-Chair (Ms. Helena Jaczek): Mr. Bisson, we will be—

Mr. Gilles Bisson: I am just saying that this whole process is a sham—

Interjections.

The Vice-Chair (Ms. Helena Jaczek): Order. Order, please.

Interjections.

Mr. Gilles Bisson: That's it. You're on your own.

FAR NORTH ACT, 2010

LOI DE 2010 SUR LE GRAND NORD

Consideration of Bill 191, An Act with respect to land use planning and protection in the Far North / Projet de loi 191, Loi relative à l'aménagement et à la protection du Grand Nord.

The Vice-Chair (Ms. Helena Jaczek): The time now being 5 o'clock, as we are ordered by the House to be here at 5 p.m. on Wednesday, September 15, 2010, those amendments which have not yet been moved shall be deemed to have been moved, and the Chair of the committee shall interrupt the proceedings and shall, without

further debate or amendment, put every question necessary to dispose of all remaining sections of the bill and any amendments thereto.

We will resume with government motion 5, sections 6.1 and 6.2. All those in favour? That is carried.

Now we will move to government motion 6, section 7. Shall section 7, as amended, carry? That's carried.

Section 8, government motion 7, subsections 8.1 and 8.2. Carried.

Government motion 8, subsection 8(2.1)—

Mr. Lou Rinaldi: On a point of order, Madam Chair: Just a clarification. Do they have to be read into the record?

The Vice-Chair (Ms. Helena Jaczek): They do not need to be read into the record; we just read the title.

Government motion 9, clauses 8(3)(a) and (b). Carried.

Government motion 10, subsection 8(6). Carried.

Government motion 11, clause 8(7)(b). Carried.

Government motion 12, clause 8(8)(b). Carried.

Government motion 13, clause 8(8)(d.1). Carried.

Government motion 14, clause 8(8)(f). Carried.

Government motion 15, subsection 8(10). Carried.

Government motion 16, clauses 8(10)(b) and (c). Carried.

Government motion 17, clauses 8(12)(a) and (b). Carried.

Government motion 18, clauses 8(13)(a), (b) and (c). Carried.

Government motion 19, subsection 8(14). Carried.

Government motion 20, subsection 8(15). Carried.

Government motion 21, subsection 8(15.1). Carried.

Government motion 22, subsection 8(16). Carried.

Government motion 23, subsection 8(20). Carried.

Shall section 8, as amended, carry? Carried.

Now we're looking at section 9, government motion 24, subsection 9(3). Carried.

Government motion 25, clauses 9(3)(b) and (c). Carried.

Government motion 26, subsection 9(5). Carried.

Government motion 27, subsection 9(6). Carried.

Shall section 9, as amended, carry? Carried.

Government motion 28, subsection 10(4). Carried.

Shall section 10, as amended, carry? Carried.

Government motion 29, section 11. Carried.

Shall section 11, as amended, carry? Carried.

Government motion 30, subsections 12(1) and (2). That's carried.

Shall section 12, as amended, carry? Carried.

Government motion 31, subsection 13(2). That's carried.

Government motion 32, subsection 13(2), paragraph 5. Carried.

Government motion 33, subsection 13(2), paragraph 6. That's carried.

Government motion 34, subsections 13(3), (4) and (4.1). That's carried.

Government motion 35, subsection 13(5). Carried.

Shall section 13, as amended, carry? That's carried.

Shall section 14 carry? Carried.

Shall section 15 carry? Carried.

Government motion 36, sections 16 and 16.1. That's carried.

Shall section 16, as amended, carry? Carried.

Shall section 17 carry? Carried.

Government motion 37. It's a new section, 17.1. That's carried.

Government motion 38, clauses 18(2)(c) and (d). Carried.

Government motion 39, clause 18(2)(f). Carried.

Shall section 18, as amended, carry? Carried.

Government motion 40, subsection 19(3) of the bill, subsection 11(1), paragraph 1. Carried.

Government motion 41, subsection 19(4) of the bill, subsection 13(2), paragraph 2. That's carried.

Shall section 19, as amended, carry? Carried.

Shall section 20 carry? Carried.

Government motion 42, section 21 of the bill, subsection 9(6) of the Provincial Parks and Conservation Reserves Act, 2006. Carried.

Shall section 21, as amended, carry? Carried.

Shall section 22 carry? Carried.

Shall section 23 carry? Carried.

Shall section 24 carry? Carried.

Shall the title of the bill carry? Carried.

Shall Bill 191, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? Carried.

This meeting stands adjourned.

The committee adjourned at 1709.

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Deuxième session, 39^e législature

Official Report of Debates (Hansard)

Monday 18 October 2010

Journal des débats (Hansard)

Lundi 18 octobre 2010

Standing Committee on General Government

Water Opportunities and Water
Conservation Act, 2010

Comité permanent des affaires gouvernementales

Loi de 2010 sur le développement
des technologies de l'eau
et la conservation de l'eau

Chair: David Orazietti
Clerk: William Short

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Monday 18 October 2010

Lundi 18 octobre 2010

The committee met at 1402 in room 151.

SUBCOMMITTEE REPORT

The Chair (Mr. David Oraziotti): Good afternoon, everyone. Welcome to the Standing Committee on General Government. We're going to get started so I will ask, Mr. Mauro, if you can read into the record the subcommittee report, and if there are any questions or comments, we'll take those, vote on that and then we can get to the presentations.

Mr. Bill Mauro: Your subcommittee met on Tuesday, September 28, 2010, to consider the method of proceeding on Bill 72, An Act to enact the Water Opportunities Act, 2010 and to amend other Acts in respect of water conservation and other matters, and recommends the following:

(1) That the committee hold public hearings in Toronto on Monday, October 18, 2010, and Wednesday, October 20, 2010.

(2) That the committee clerk, in consultation with the Chair, post information regarding public hearings on the Ontario parliamentary channel and the committee's website.

(3) That the committee clerk, in consultation with the Chair, place an advertisement the week of September 27, 2010, in the Globe and Mail.

(4) That interested parties who wish to be considered to make an oral presentation contact the committee clerk by 5 p.m. on Wednesday, October 13, 2010.

(5) That the committee clerk distribute to each of the subcommittee members a list of all the potential witnesses who have requested to appear before the committee by 9 a.m. on Thursday, October 14, 2010.

(6) That the committee clerk schedule the witnesses on a first-come, first-served basis.

(7) That all witnesses be offered 10 minutes for their presentation and that witnesses be scheduled in 15-minute intervals to allow for questions from committee members, if necessary.

(8) That the deadline for written submissions be 5 p.m. on Wednesday, October 20, 2010.

(9) That the research officer provide a summary of the presentations on Friday, October 22, 2010, at 10 a.m.

(10) That, for administrative purposes, amendments to the bill be filed with the clerk of the committee by 12 noon on Friday, October 22, 2010.

(11) That the committee meet on Monday, October 25, 2010, and Wednesday, October 27, 2010, for clause-by-clause consideration of the bill.

(12) That the committee clerk, in consultation with the Chair, be authorized, prior to the adoption of the report of the subcommittee, to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

The Chair (Mr. David Oraziotti): Okay, thank you, Mr. Mauro. Any questions? Everyone has the report?

Mr. Dave Levac: Agreed.

The Chair (Mr. David Oraziotti): Agreed? All in favour? Opposed? Okay, the subcommittee report is carried. Thank you very much.

Committee, please note the deadlines for information and also the dates for clause-by-clause as well.

WATER OPPORTUNITIES AND WATER
CONSERVATION ACT, 2010LOI DE 2010 SUR LE DÉVELOPPEMENT
DES TECHNOLOGIES DE L'EAU
ET LA CONSERVATION DE L'EAU

Consideration of Bill 72, An Act to enact the Water Opportunities Act, 2010 and to amend other Acts in respect of water conservation and other matters / Projet de loi 72, Loi édictant la Loi de 2010 sur le développement des technologies de l'eau et modifiant d'autres lois en ce qui concerne la conservation de l'eau et d'autres questions.

RIVERSIDES FOUNDATION

The Chair (Mr. David Oraziotti): We'll move to presentations. Again, as agreed to by the committee, presenters will have 15 minutes for their presentation: 10 minutes maximum for their comments and five minutes for questions among members of the committee. You can start by stating your name, and you can proceed with your presentation.

Mr. Kevin Mercer: I'm Kevin Mercer, founder of RiverSides Foundation. Since 1995, our mission at RiverSides has been to advance the adoption of low-impact development designed to eliminate stormwater runoff pollution fouling Toronto's rivers and Lake Ontario nearshore waters. Central to that mission is the goal of urban watershed renewal, emphasizing rainwater harvest-

ing as the pivotal green-tech solution to grey infrastructure of waste water management practised throughout Ontario and most of North America.

RiverSides' Five Things community stormwater social marketing campaign has earned the US Council of Great Lakes Governors designation as the Lake Ontario urban, non-point-source-pollution prevention, education and outreach success story. We largely support our efforts through a social enterprise to manufacture rain barrels. This unique residential rainwater harvesting technology has been selected by none other than the city of Washington, DC's preferred design for residential rain barrels.

Indeed, RiverSides has primarily sold its award-winning Five Things low-impact stormwater campaign and advanced rain barrel design to the United States, an export success story that results from having been starved of support and funding in Ontario, where smart stormwater design has languished compared to the United States, Europe or Australia. That reflects Ontario as a province rich in cheap water, relatively bereft of municipal leadership and driven by higher-tier government stormwater regulations; when asked to address the challenges of climate adaptation, municipalities revert to the pipes-and-tunnels vision of urban stormwater infrastructure.

Ontario has fallen further and further behind those jurisdictions where stormwater is recognized as the indicator species of environmental leadership. For smart jurisdictions, green energy and energy conservation do not shoulder aside equivalent efforts for clean tech in water.

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For that reason, RiverSides soundly welcomes this government's proposed Water Opportunities Act but seeks this Legislature's members' support to ensure that this legislation goes well beyond being a mere paean to pipes, pumps and treatment technologies. The value of this act will be achieved when Ontario changes the landscape both in figurative and metaphorical terms by cleaning up our own deficit in clean-tech water systems, when it puts its money and that of its municipalities toward smart stormwater, and when it takes pride in public engagement in the conservation and smart design solutions rather than leaving water to the engineers of pipes and pumps.

For decades, Ontario and its municipalities have ignored the importance of advanced stormwater management methods. Ontario has been a desert for the funding of water technology infrastructure and water clean tech, and has for the most part dismissed water, partially because of the Walkerton tragedy, as something that belongs in a pipe throughout its life. Meanwhile, the rest of the world and other provinces such as Alberta have moved well beyond, to adopt water in the same light as green energy.

Ontario's age-old leadership of conservation authorities and early stormwater regulations has been whittled down to the point where Ontario has lost its lead. If the evidence on the ground is anything to go by, we have

actively disengaged from what is necessary to be a leadership jurisdiction respecting clean tech in water.

I offer you one example, and that is the treatment of rain, the primordial element. Does the proposed Water Opportunities Act give rain its primacy, or does it just consider it the source of treated water, the source of runoff pollution and the reason for flooding? Will this act realize that rain is the ultimate resource and that its impacts result not from itself but from poor urban design, a pipes-and-tanks-focused municipal infrastructure and a lowest-common-denominator attitude toward the ultimate resource, so that it ends up being classified as a waste product we call stormwater?

Most importantly, rain is climate change that hits the ground. How Ontario deals with rain is central to climate change adaptation and the resilience of our economy and society. This act, and the future of Ontario, rest with recognizing the value of rain, as well as adapting existing infrastructure to reduce costs associated with water and waste water infrastructure.

In the same way that we have changed our view to accommodate green energy supplies, we must instil a conservation ethic of use and an industrial strategy premised on fostering the creative class of designers, manufacturers and advocates in the field.

I will leave you with an instructive story. As Canadians, we have precious few environmental leadership points, and water certainly isn't one of them. Internationally, our performance in terms of regulatory, research, implementation and public engagement with respect to advanced water technologies is woefully deficient.

Right now, Ontario municipalities dispose of rain as sanitary sewage or stormwater, and yet for five years our organization has sought to resolve that climate change challenge through its groundbreaking water energy nexus project. Our business case for cities to build out rain harvesting as a strategy to reduce electricity demand, reduce greenhouse gas emissions and curtail demand for larger water and waste water asset infrastructure has, by and large, been ignored. Meanwhile, Germany, Australia, Texas and others, for 20 years or more, have been harvesting rain as a principal source to flush toilets, water yards and wash anything other than people.

RiverSides Foundation's groundbreaking research into the water energy nexus identified the electrical generation and water and sewage infrastructure conservation opportunities as well as the GHG reduction opportunities that would arise from a full build-out of rainwater harvesting in commercial, institutional and residential sectors. However, the project failed to find suitable financing and support, and Ontario missed a five-year advantage in commercial-building rain harvesting as a climate change adaptation technology. That lead has now evaporated as the French water utility, Veolia Water, has published a parallel water infrastructure energy assessment which it plans to sell to municipalities worldwide.

Five years of effort has encountered resistance to rain harvesting by the province, the city of Toronto and, indeed, many other would-be environmental supporters

largely indifferent to the value of rainwater harvesting. By the same logical extension, preferring the existing water and waste water infrastructure to advanced stormwater management is akin to saying we have no shortage of energy because we have coal plants, so why generate green power?

Is it any wonder that Ontario falls farther and farther behind Germany, Australia and even the United States, who have identified stormwater as a priority water technology and supported by regulations and technology funding the implementation of lot-level runoff capture and distributed stormwater treatment that accommodates rainwater harvesting as a central green building and neighbourhood design technology?

Water security, stormwater adaptation and climate change resilience are three immediate factors tied to rainwater harvesting. I encourage this government to strengthen the ties between water infrastructure policy, energy conservation policy and climate change policy. Few of us are aware that pumping municipal water and sewage constitutes the largest individual electrical demand of major cities throughout Ontario. Toronto water and sewage consume fully 33% of the city of Toronto's energy budget, roughly as much as the TTC, streetlights and buildings combined.

Please ensure that this act addresses the water-energy nexus associated with the provision of water and waste water services by municipalities throughout Ontario. We ask this Legislature to ensure that this act acknowledges rainwater harvesting technologies and their adoption in green buildings and retrofits by establishing regulations and funding for rain harvesting throughout Ontario. This can be achieved by establishing permeability coefficient costing of rainwater runoff similar to what the US and other jurisdictions are pursuing for clean-water protection. I ask this Legislature to show the leadership that this issue needs by establishing a framework for municipalities to fund their water and waste water infrastructure through lot-level levies that encourage property-based solutions to runoff. Cleaning up water that has been mistreated offers fewer business opportunities globally than being a leader in keeping water clean, using less of it and transforming waste into a resource.

For this act to facilitate the creation and growth of globally competitive companies and high-value jobs in the water and waste water sector, we must value water and the technologies that accompany its protection. This act must promote advanced technologies such as grey and rainwater harvesting and reuse to make the most of the water that we have.

I thank you for your attention and look forward to seeing the opportunities for water that Ontario so richly deserves.

The Chair (Mr. David Oraziotti): Thank you very much for your presentation. Mr. Barrett, go ahead if you have questions.

Mr. Toby Barrett: Thank you, Chair, and thank you to RiverSides for that presentation. You've certainly brought us back to kind of the core principle: that so

much of our water does come from rain. In the area where I live, probably half the people in my riding are not hooked up to the sewer pipes and the water pipes that you're talking about. Our water comes from rain—on the roof, through an eavestrough and into a cistern. Many of us have wells for drinking water, but the rest of the water comes from rain.

I'm quite heartened by your work with respect to the rain barrel project. I've mentioned this in the Legislature: The Ontario Horticultural Association has adopted the rain barrel. You may be familiar with that.

Mr. Kevin Mercer: Yes, I am.

Mr. Toby Barrett: They had what I thought was an excellent program, in very easily understandable language, to encourage people to have rain barrels at their eavestrough rather than having it, say, wash out on the street or wherever.

I just think of the system I have. We have a number of wells on various farms. I've had wells for drinking water. Regrettably, salt on the roads and things like that deteriorate the quality of that kind of water. As I understand it now, it's essentially illegal, through public health, to treat and drink rainwater coming from your roof. I don't know whether you're aware of that.

Mr. Kevin Mercer: Yes, I am.

Mr. Toby Barrett: I can understand why that's done, but—

Mr. Kevin Mercer: We actually are one of the few jurisdictions in the world where that remains a restriction. The Australians are treating and drinking rainwater, and they are in Texas as well.

Mr. Toby Barrett: In Ontario, there must be technology that would allow people like those in my riding to go back to drinking rainwater by cleaning it up.

Mr. Kevin Mercer: There is, absolutely.

Mr. Toby Barrett: Okay. Because I think you—

The Chair (Mr. David Oraziotti): You have one last question, Mr. Barrett.

Mr. Toby Barrett: In your presentation, you seem to limit rainwater to flushing toilets, watering yards and washing anything other than people. I think that's short-sighted. Rain is a really valuable resource. We have a fair number of inches in this part of the globe, and I'm hoping that your work can take us further so that we use it for more than just flushing toilets.

Mr. Kevin Mercer: I welcome that.

The Chair (Mr. David Oraziotti): Thank you, Mr. Barrett. Mr. Tabuns, questions?

Mr. Peter Tabuns: Kevin, thanks very much for the presentation. On page 5, you say that water and sewage consume fully 33% of the city of Toronto's energy budget. Is that the corporation of the city of Toronto?

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Mr. Kevin Mercer: The corporation of the city of Toronto, correct.

Mr. Peter Tabuns: And what do you have, offhand, for megawatt capacity?

Mr. Kevin Mercer: I have a report which I can forward to you.

Mr. Peter Tabuns: Okay, I would appreciate that.

Mr. Kevin Mercer: It was developed by the Toronto Atmospheric Fund to identify the greenhouse gas savings resulting from rainwater harvesting in buildings and the combined sewer system in Toronto.

Mr. Peter Tabuns: You make a number of recommendations for approaches that we should be taking to this bill. Do you have concrete amendments to the act that you can provide us with?

Mr. Kevin Mercer: I can.

Mr. Peter Tabuns: Okay, if you could do that and give it to the clerk so that it could be circulated to us, I would appreciate that.

Mr. Kevin Mercer: Thank you.

The Chair (Mr. David Oraziotti): Ms. Jaczek.

Ms. Helena Jaczek: Thank you, Mr. Mercer. Certainly, many of your comments absolutely resonate with the government members. Of course, this is why we're bringing this bill forward: because we see the need for significant change. Although grey water harvesting and reuse are currently permitted under the building code, we're not seeing the kind of uptake that perhaps we would all wish.

I just wanted to make sure you understand that we will require a review of the building code, and these kinds of water conservation measures will be particularly referenced and become potentially new standards, so this is definitely something we're looking at.

But just in your experience, based on the fact that you have been able to get your technology to other jurisdictions, what kind of—if you could maybe expand a little bit on those further opportunities to commercialize rainwater harvesting technologies here in Ontario to create jobs. Could you just elaborate a little bit?

Mr. Kevin Mercer: I think the best example is, as member Barrett outlined, starting with the individual residential rain barrel. Most municipalities will have a rain barrel program, but it will be the lowest-common-denominator technology. It will not actually tie into anything. We have a tendency to offer residential property owners, in effect, the least we can get away with. If we applied that to our roads or to any other infrastructure, it would be embarrassing. It would also be illegal.

It seems that we treat the growth of technology with respect to water on a second-class basis when it comes to stormwater and as a priority when it comes to drinking water. I suppose that's at least admirable in that we are protecting human health. However, the Europeans, particularly the Germans, have levelled the playing field with respect to the two and have focused on how to create a lot-level system where the property uses that water which accrues to the lot level, whether it's from rain or from other sources, as a first, as building in a series of lot-level activities by buildings, whether they're residential or commercial, and then sizing their larger municipal or regional infrastructure as a result.

We take the opposite view. We build large municipal and regional infrastructure and then we add, sort of at the edges, what little we can get away with and then suggest

that we don't have enough money because we've spent it all on large municipal infrastructure. The best example is stormwater—

The Chair (Mr. David Oraziotti): Thank you, Mr. Mercer. That's the time we have for your presentation.

Mr. Dave Levac: On a point of order, Mr. Chair: Mr. Tabuns asked whether there would be some materials available. Mr. Mercer, if you could share that with the table as well, so that we could all have it. I'm curious about that—

Mr. Kevin Mercer: I shall forward it.

Mr. Dave Levac: Thank you.

The Chair (Mr. David Oraziotti): Thank you, Mr. Levac.

Mr. Kevin Mercer: Thank you very much, Chair and members.

The Chair (Mr. David Oraziotti): Thank you, Mr. Mercer, for your presentation. We appreciate you coming in today.

CONSERVATION ONTARIO

The Chair (Mr. David Oraziotti): Our next presentation is Conservation Ontario. Good afternoon. Welcome to the Standing Committee on General Government. You have 10 minutes for your presentation and five for questions. Please state your name for the purposes of Hansard, and you can begin when you're ready.

Mr. Charley Wort: My name is Charley Wort. I'm the source water protection manager at Conservation Ontario, the provincial organization representing Ontario's 36 conservation authorities.

With me today is Deborah Martin-Downs, director of the ecology division at Toronto and Region Conservation Authority, one of Conservation Ontario's members.

Conservation Ontario supports the proposed Water Opportunities and Water Conservation Act. Our comments, which are supported by specific proposed amendments in the handout that you have, are intended to strengthen the legislation.

Conservation Ontario is also a member of the Ontario Water Conservation Alliance. While we will focus our presentation today on two key areas, Conservation Ontario also supports the alliance's recommendations.

Our first recommendation deals with the need for integrated management of Ontario's water resources. The primary purpose of the Water Opportunities and Water Conservation Act is "to conserve and sustain water resources for present and future generations." While the act provides a number of tools to support the efficient and sustainable use of water resources, these tools cannot be successfully implemented without a comprehensive understanding of the state of our water resources.

The watershed is universally recognized as the fundamental unit for managing water because water flows across jurisdictional boundaries. Integrated watershed management, or IWM, is the internationally recognized process of managing human activities and water resources on a watershed basis. IWM allows us to characterize our

sources of water, identify issues and concerns, understand the various stakeholders involved and determine collaborative approaches for dealing with multiple challenges, allowing us to minimize conflicting demands.

IWM is based on a collaborative process among stakeholders to identify issues and concerns, develop and implement actions, monitor and report progress and update as required in order to adapt to change.

Conservation Ontario believes that to ensure sustainability of Ontario's water resources, the Water Opportunities and Water Conservation Act must be based on an IWM approach to provide the knowledge to guide implementation.

In Ontario and across Canada, the benefits of IWM are being recognized over sector- or issue-based approaches. In his report on the Walkerton inquiry, Justice O'Connor endorsed the need for an integrated approach to managing Ontario's water resources.

Although the Clean Water Act is based on a watershed approach to develop source protection plans, it does not address water uses for all purposes.

In his recently released annual report called *Re-defining Conservation*, Ontario's Environmental Commissioner calls IWM, as carried out by the province's conservation authorities, "an excellent example of how natural landscape features can be conserved and protected in Ontario's land use planning context."

Conservation Ontario is recommending that integrated watershed management be incorporated into several areas of the act. The purpose statement of the act must recognize the need to manage water on a watershed basis. In doing so, it will allow the province to ensure sustainable water resources, taking into account the consideration of human, economic and ecosystem needs.

The province must set provincial targets to allow Ontario to measure and monitor overall performance in achieving water conservation objectives. A process for setting watershed-specific targets is also recommended. Targets at this scale would promote sustainable water use on a watershed basis.

Municipal water sustainability plans and joint plans must be completed under the umbrella of integrated watershed management to ensure sustainable management for all components of water, waste water and stormwater. These plans must also recognize sustainability of water for ecosystem functions as well as human use.

Performance indicators for water sustainability plans must be based on the need to conserve and sustain water resources. We recommend that indicators be linked to the maintenance of watershed health in accordance with watershed plans and water budgets.

Ontario is a leader in watershed management. The province has the opportunity to reflect in the Water Opportunities and Water Conservation Act the importance of watersheds as the fundamental water management unit which must underlie all water decisions and activities. The proposed changes to the act would recognize IWM's contributions to better water management.

Our second key recommendation speaks to the need to recognize green infrastructure as a viable addition to

traditional water infrastructure and conservation approaches. Green infrastructure means natural vegetation and vegetative technologies, including forests, natural areas, streams and riparian zones, green roofs and walls, engineered wetlands and stormwater ponds.

Green infrastructure helps to maintain a more natural balance and conserve water supplies at the source. Green infrastructure provides a wealth of benefits relating to biodiversity and habitats, water quality and erosion control, recreation, improved quality of life and a greater resilience to the impacts of urban growth and climate change.

We believe that green infrastructure can support all three purposes of the Water Opportunities and Water Conservation Act.

The act speaks to fostering innovative technologies and services. Green infrastructure is an emerging area for new technology and practices, including green roofs and walls and engineered wetlands and stormwater ponds. Green infrastructure technologies and practices not only address water infrastructure needs but have the added benefit of providing green space for community health, providing habitat, cleaning air and water, and addressing climate change effects.

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Another purpose of the act is to create opportunities for economic development and clean technology jobs in Ontario. Investment in green infrastructure is cost-effective, moving us beyond single-purpose projects and leveraging funds to solve multiple problems. The use of green infrastructure is also cost-efficient.

For example, a study of the Credit River shows that green infrastructure provides services worth more than \$370 million each year, including annual savings of \$100 million in water supply costs.

Research and innovation in green infrastructure is also a growth sector, providing ample opportunities for green job creation and technology development.

Finally, the Water Opportunities and Water Conservation Act is intended to ensure conservation and sustainability of our water resources. Green infrastructure helps to maintain and enhance the flow of clean water back to our water sources, reduces runoff, and filters pollutants. Technologies such as rainwater harvesting help to conserve water and reduce energy costs associated with water treatment and distribution. Investment in green infrastructure will also offset costs of investment in traditional water infrastructure.

Taking a green infrastructure approach also facilitates water conservation target setting by placing water demand and use in its ecological context. Green infrastructure will help us adapt to a changing climate by creating robust natural and urban systems, leading to the protection of water quality and quantity and reducing stress on our water infrastructure.

By including green infrastructure in the Water Opportunities and Water Conservation Act, the province will entrench its leadership in watershed management and show its support for innovative green technologies to meet future needs.

Conservation Ontario recommends that green infrastructure be incorporated into the following areas of the act: The province should support the inclusion of green infrastructure as tools within municipal water sustainability plan and joint plans; and performance indicators should also promote green infrastructure technologies, services and practices as a means to maintain and improve Ontario's water resources.

As local watershed managers, conservation authorities already use integrated, ecologically sound practices to manage water resources. Conservation authorities can provide an understanding of the watershed context, including watershed conditions, watershed stakeholders and existing water conservation programs.

Conservation authorities are an integral part of protecting our watersheds' existing green infrastructure and promoting new green technology. We believe that with the changes we propose, the act will put Ontario in the forefront of sustainable water resource management.

Ontario's conservation authorities are ready to provide support to the implementation of the act specifically related to the development of water conservation targets and municipal water sustainability plans through our available watershed information, knowledge and expertise.

Thank you for the opportunity to speak with you today.

The Chair (Mr. David Oraziotti): Thank you very much for your presentation. You're right on time.

We'll go to questions. Mr. Barrett, do you have any questions for the presenters?

Mr. Toby Barrett: Do we go in rotation?

The Chair (Mr. David Oraziotti): Yes.

Mr. Toby Barrett: I'll defer to Mr. Tabuns.

The Chair (Mr. David Oraziotti): Sorry, Peter. Go ahead.

Mr. Peter Tabuns: Thank you for the presentation. One question that comes up is the performance indicators that you say should be part of this legislation. What are the things that we need to benchmark in order to determine that that municipality or other entity is performing their job properly?

Mr. Charley Worte: With respect to watershed management?

Mr. Peter Tabuns: Yes.

Mr. Charley Worte: You can't speak to specific indicators because they need to flow from the capacity of the system under discussion. I think what we're saying is, you need to understand the watershed you're working in, what its capacity is, what its water resources are and the quality of those resources, and let that information dictate to you what the parameters need to be to manage water sustainably in that watershed.

Mr. Peter Tabuns: Okay.

The Chair (Mr. David Oraziotti): Thank you. Ms. Jaczek, go ahead.

Ms. Helena Jaczek: Following up a little bit on that, I guess from our perspective, although we expect aspirational targets overall to be introduced as part of the act, we feel we need some baseline data to look

specifically at various watersheds and municipalities. So I appreciate your comments in general and also on the importance in terms of the green infrastructure; I think that's very important. I know that as it relates to the Lake Simcoe Protection Act in my area, a lot of those ideas permeate that act.

I would like to just simply say that I hope conservation authorities will be in a position to assist municipalities. They're going to have to produce sustainability plans. They're going to have to consider a number of different options. With your knowledge, your resources, I guess the question is: Will you be able to assist municipalities?

Mr. Charley Worte: I think that's the overall intent of our recommendations, to make it clear that a lot of this work needs to be done on a watershed basis, that we need to have that understanding in that context. That, by default, means involving the conservation authorities in that work. Certainly, conservation authorities are interested in becoming involved in supporting municipal planning. We think that it's necessary to do it that way, that municipalities can't successfully do that on their own because they don't have the entire context of a watershed.

The Chair (Mr. David Oraziotti): Thank you. Mr. Barrett, go ahead.

Mr. Toby Barrett: There's no question that a watershed approach is the approach to take. I think the conservation authorities in Ontario and maybe the Tennessee Valley Authority are the only ones that think in terms of watershed.

Many of the conservation authorities own land, buy land and sell land. I know that my conservation authority just sold 1,000 acres so that they can buy more land somewhere else. I think part of their role is to probably log it for funding. With the buying and selling of land by conservation authorities, is that investment made strictly for watershed management now, or is it to buy, say, woodlots for logging? That's one question I have, just given the mandate of the conservation authorities.

Mr. Charley Worte: The mandate of the conservation authorities is to develop programs to properly manage and conserve the natural resources in a watershed. The purchase of land, or the management of land, is primarily for the purpose of sustaining the environment, the water and the natural features of the watershed. Part of that may be sustainable use. I'm not going to speak specifically to that, because I'm not familiar with the circumstances there, but the primary purpose is to sustain and protect the watershed and the resources as a whole.

Mr. Toby Barrett: That's through legislation, I suppose.

Mr. Charley Worte: Yes. That's section—

Mr. Toby Barrett: Purchasing watersheds: If the conservation authorities were going to ramp that up, I wonder what role municipalities would play. There are no municipalities testifying today. It's unfortunate. These hearings are being held in the middle of a municipal election. I'm assuming, as many of the groups testifying assume, that the property taxpayers are going to foot the

bill for this. I just wanted to point that out, given your close relationship as conservation authorities with municipal partners. I know Ms. Savoline may have some comments on that as well, as our municipal critic.

Mrs. Joyce Savoline: I have a question.

The Chair (Mr. David Oraziotti): If you have something very brief, because it's about time.

Mrs. Joyce Savoline: My question is, how are municipalities going to be involved? It's noticeable that none of them are appearing today, and I doubt they will during a municipal election, because there really can't be any decisions made by councils now. So how do we get them involved to understand their partnership in all of this? And most especially, since conservation authorities levy the municipalities for their funding, how do we know how that relationship is going to take place and whether municipalities actually have something to say about this?

The Chair (Mr. David Oraziotti): If you have a brief response.

Mr. Charley Worte: I'm going to defer that to Deborah.

Ms. Deborah Martin-Downs: If I may briefly, the municipalities have been our partners in undertaking watershed plans and in determining the waters that are available for both environmental purposes and for groundwater purposes. Certainly they are at the table for the source water protection plans, where water balances have been developed. They are the key holders of the water sustainability plans, for they provide the water to the municipal residents.

In that way, they have to have water to supply, and that's the message that we're trying to leave with you today. There is a myth of abundance of water. We have what appears to be a lot, but at the end of the day, we don't understand how much is available, and in many places throughout the province we are even over-allocating what's available. So first we have to start from a position of knowledge of how much is available so we can set the targets and assist the municipalities in conserving it and treating it appropriately.

The Chair (Mr. David Oraziotti): Thank you. That's time for your presentation. I appreciate you coming in today.

RESIDENTIAL AND CIVIL CONSTRUCTION ALLIANCE OF ONTARIO

The Chair (Mr. David Oraziotti): Our next presentation is the Residential and Civil Construction Alliance of Ontario. Good afternoon. Welcome to committee.

Mr. Andy Manahan: Thank you very much. Dear Chair and committee members, on behalf of its members and stakeholders in the wider construction and infrastructure sector, the Residential and Civil Construction Alliance of Ontario is pleased to make a submission regarding Bill 72, the Water Opportunities and Water Conservation Act.

The Chair (Mr. David Oraziotti): If I can just ask you to state your name for the purposes of recording Hansard, and then you've got 10 minutes.

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Mr. Andy Manahan: My name is Andy Manahan, and I'm the executive director with RCCAO.

RCCAO was formed in 2005 as an alliance composed of management and labour groups that represent all facets of the construction industry. Our members include companies and workers who build both low-rise and high-rise homes as well as roads, sewers, water mains, bridges and other infrastructure.

RCCAO consults with government, the private sector and the construction industry to devise solutions to issues related to public infrastructure and advocate for adequate investment in public transit, roads and highways, water and sewer systems and other public infrastructure essential to economic growth and quality of life. We do provide research and reports and make recommendations on how to realistically ensure adequate infrastructure for the province.

You have before you a list of our members, but there are five from the management side and four from construction unions. I just wanted to highlight that one of our members, the Greater Toronto Sewer and Watermain Construction Association, sits on our board. I believe the Ontario section of that association will be presenting later this afternoon.

RCCAO members and stakeholders in the construction and infrastructure sector have had a long-standing interest in water policy in the province. We have provided comments in the past on the Clean Water Act, the Lake Simcoe Protection Act and the protection plan, and we have promoted the need for the Sustainable Water and Sewage Systems Act, 2002, as well as the development of regulations under that act to ensure full cost pricing for water. For example, I have attached a letter to the editor of Water Canada magazine which appeared earlier this year.

Our members include companies and labour that excavate and install underground water infrastructure, both for delivery of potable water to residential, commercial, industrial and institutional buildings and for stormwater and sanitary sewer systems for carrying waste water to treatment plants. We know from first-hand experience the dramatically greater costs to resolve water leaks and systemic breakdowns like sinkholes caused by pipeline breaks, compared with a more efficient asset-management approach where infrastructure maintenance is done on an ongoing basis.

In addition to our members' on-the-ground and, I might add, under-the-ground experience, RCCAO has commissioned extensive research on the costs of and solutions to water infrastructure challenges. I can provide these to the clerk later, but here are four of the reports that are listed in your handout. Excerpts from the last four reports listed are also appended to this presentation, but all the reports can be accessed via the RCCAO website at rccao.com.

Among other findings, these studies speak to the extraordinary societal costs of neglecting water infrastructure investment. The June 2009 study, for example, determined that in Ontario 25% of all processed water is leaked into the ground after leaving treatment plants due to faulty pipes, 30% of all the energy consumed in pumping water is wasted due to such leakage, and finally, the cost of improperly maintained water and waste water systems runs up to \$1 billion annually in the province of Ontario. Therefore, there are compelling reasons for the province to develop a legislative framework that will require municipalities to assess and maintain their water infrastructure.

For many years, we did advocate for the proclamation of SWSSA, arguing that the development of effective regulations under this act was a critical missing element in the matrix of protections recommended by the O'Connor commission. Only when municipalities are required to assess and recover the full cost of operating and maintaining sewer and water services will the public have the assurances that Justice O'Connor put forward.

Over the past two years, RCCAO has had meetings with a number of ministers and senior representatives within government and the bureaucracy who have indicated that new legislation would be preferable to SWSSA. The chief reasons cited were that SWSSA did not sufficiently deal with the special needs of very small municipalities facing high costs to update and maintain their systems and that SWSSA had been developed prior to the 2009 PSAB section 3150 accounting regulations and therefore did not reflect the new era of full accrual accounting for municipalities.

Both are valid concerns. While these could have been addressed by amendments to SWSSA, the government has chosen to introduce the Water Opportunities Act instead. This was also done, in part, to promote water technology development and export. This secondary goal of Bill 72 is legitimate and valuable but largely outside of our core expertise and concerns. For this reason, RCCAO does not intend to address part II of the bill, related to the Water Technology Acceleration Project.

However, RCCAO does support the broad intent of Bill 72, which, if passed, will provide a framework for developing and implementing a province-wide approach to planning and financing water and waste water infrastructure. We are concerned, however, that the bill does not go far enough in compelling every municipality, on its own or in combination with others, to develop, maintain and self-finance a sustainable plan for water and waste water infrastructure.

These are core principles that should be incorporated in the legislation:

- (1) Require full-cost pricing for water.
- (2) Establish mandatory metering to control how much water is used.
- (3) Create dedicated reserves to ensure that water and waste water infrastructures are always adequately maintained and operating at peak efficiency.

Experience has shown that without such requirements, the vast majority of municipalities will never implement

plans to fully maintain or replace this infrastructure or charge user fees sufficient to finance such plans. As the Conference Board of Canada report of November 2009 noted, "Underinvestment in this critical infrastructure can be attributed to the financing challenges confronted by Canadian municipalities, underpricing of water services and a lack of government priority. One might argue that there is a fundamental disconnect between the long-term nature of water infrastructure planning and the short-term priorities of elected municipal councils."

In addition, municipal underinvestment in water and waste water assets has been aggravated by traditional accounting practices and a lack of attention to effective asset management based on condition assessment and replacement cost rather than historical cost. This has been identified even by an association representing municipal officials, the AMCTO. There's a quote there, which I won't bother reading for you.

Bill 72 provides a clear opportunity to ensure that municipalities go beyond just tracking their historical investment in water and waste water assets to actually planning for and funding their ongoing needs.

The principle that users of such a municipal service should pay the cost of what they consume is hardly foreign. In fact, it is the norm for other municipal utilities. Again, the Conference Board of Canada has pointed this out by comparing other utilities, such as gas and electricity. At the end of the quote there on that page, it says that "a basic comparison between utilities in any given city would show the benefits of relying on users to fund the full cost of infrastructure."

In our June 2009 report, we did, however, talk about full-cost pricing in a little bit more of an expansive way. If I can just quote from the lead author in that, Tamer El-Diraby, "Full-cost pricing does not mean that the end users should bear all the costs. Governments (federal, provincial) should not lift its hands from infrastructure funding. It is unfair to download all the deferred maintenance costs to current users." Sorry; that was from the February 2009 report.

We also watch very carefully the private member's bill, Bill 13, which was put forward by David Caplan. We believe that this bill incorporates many of the principles and much of the language of SWSSA while also updating it to address some of the concerns that the former minister and his colleagues identified with the 2002 act.

While not dismissive of the Ontario Water Board concept within that bill, our CCO is not convinced that this is the only viable approach. We think that looking at regional water boards and their voluntary or required pooling across logical geographic regions such as watersheds, as was mentioned previously, will help to reduce the financial impact on ratepayers in very small communities.

This issue points to the clear requirement for extraordinary consultation as this bill is reviewed and implemented. It is critical that industry, municipalities, ratepayer organizations and other stakeholders have a

real ability, and certainly as we just heard, because of the municipal elections, I think we need to get municipalities at the table with other stakeholders to talk about this.

Our four recommendations are:

(1) That there be a separate consultation conducted to assist with the development of the regulations.

(2) That there be an extensive consultation process with all interested stakeholders to refine the pooling mechanism to address regional and small municipality concerns within the framework of asset management and full-cost pricing. In order to avoid any party instituting a “veto by delay,” a firm timeline, not to exceed six months, should be established for the process—

The Chair (Mr. David Oraziotti): You need to wrap up your presentation as soon as you can. If you want to make those a little more concise, that would be great. Thanks.

Mr. Andy Manahan: Okay, I will. Sorry.

Our third recommendation is that there should be language with respect to full-cost pricing, mandatory metering and dedicated reserves.

I'll flip over to recommendation number four. In our submission to the Environmental Registry, we suggested that in part III, some of the responsibility should fall to the Ministry of Energy and Infrastructure rather than to the Ministry of the Environment. But now that we have a stand-alone Ministry of Infrastructure, our recommendation has been changed such that there be a close working relationship between MOE and the new Ministry of Infrastructure to develop strategies and steps with respect to the interrelationship between growth planning and sustainability plans—

The Chair (Mr. David Oraziotti): I'm going to have to stop you there. Time for questions. Ms. Jaczek, go ahead.

Ms. Helena Jaczek: Thank you, Mr. Manahan and the RCCAO, for your presentation and your recommendations.

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I just wanted to assure both you and members of the committee that, really, there has been considerable consultation with municipalities to date. Certainly, I was present when the AMO board was briefed on the introduction of this particular bill. Also, prior to introduction, there were many, many consultation sessions where individual municipalities came forward with a number of views, bringing to our attention, in fact, some of the statistics that you've also alluded to—in other words, the leaks and so on.

Our approach clearly is to not change the way that municipalities charge for water and waste water. We want them to develop sustainability plans. We think that, through that process, they will realize the potential for cost savings through infrastructure innovation and so on, not only from saving on the water side, but also the energy side that is required. Through those consultations, there was a great deal of agreement on that.

Because of the expertise of your organization, I would be particularly interested in hearing a little bit more about

what performance measures and targets you might want to see that could be looked at in order for municipalities to have a more sustainable water infrastructure going forward.

Mr. Andy Manahan: In addition to the broader framework of full-cost pricing, there is a section in one of the reports by Tamer El-Diraby which looks at other frameworks that can be used. I don't want to get into great detail, but there can be economic valuation approaches, market techniques, contingent valuation approaches, travel cost approaches, wage differential approaches—what are the health impacts? What are the visual impacts? There's a whole range of other things that I think can be used in sustainability planning.

Not all of these frameworks are appropriate for all municipalities. Certainly for larger ones, that might be better suited. The smaller municipalities, I think, should have a different approach.

What we're arguing and I think what I've heard as well from municipalities is that the one-size-fits-all approach does not work. Therefore, it's probably incumbent on us to sit together as partners to try to figure out the best approach.

The Chair (Mr. David Oraziotti): Thank you. Ms. Savoline, do you have a question?

Mrs. Joyce Savoline: Thank you for being here today. My question will be fairly similar again to the previous question I asked, and that was about the involvement of municipalities. As you're aware, we're in the middle of municipal elections in Ontario, so it's a little difficult for municipalities to be represented at these hearings. I think it's pivotal to hear from them, yet there's no voice from them at all here.

I agree with your approach. In fact, from my former life as chairman of Halton region, I understand the concept of full-cost pricing; I understand the concept of keeping a rate budget completely separate from an operating budget, and being true to that and not mixing those monies, because your waste water and water budget is probably the biggest investment a municipality has. It's billions of dollars of investment, and you really have to keep a close eye on that.

I guess what I'm asking you is, how do we get municipalities involved in this discussion? Because they're a huge player. They are the folks who are going to be collecting the fees. They're the folks who are going to be setting up the plans. They need to be involved in order to get what I consider to be their expertise in this matter, because there are a lot of very sophisticated municipalities that run really good shops. We're not getting any feedback from them, and I'm not comfortable—

The Chair (Mr. David Oraziotti): Okay, let's give him an opportunity to respond, because we're not going to be able to get all the members—

Mrs. Joyce Savoline: It was an important question for me.

Mr. Andy Manahan: I'll do my best to provide a succinct answer. I have been in touch with certain municipally based organizations, such as the Ontario Good

Roads Association and the Ontario Coalition for Sustainable Infrastructure. From my understanding, they're quite supportive of the intent of Bill 72. I think where we need the further consultation is on the regulatory side, as I mentioned in my presentation.

The Chair (Mr. David Orazietti): Thank you very much for that. We're going to need to move on.

Mr. Tabuns, go ahead.

Mr. Peter Tabuns: Thanks for coming in and making this presentation today. Can you give us a sense of the scale of capital requirements to put our water delivery systems into good working order?

Mr. Andy Manahan: I did read the Environmental Commissioner's report that came out last month. I think they said that since 2007, there has been about \$650 million invested in water sewage infrastructure, but the gap is \$18 billion, so we have a long way to go.

Mr. Peter Tabuns: And your figures show that we're losing somewhere between \$500 million and \$1 billion a year in wasted water pumped into the ground.

Mr. Andy Manahan: Which includes the energy costs, yes.

Mr. Peter Tabuns: Right. Okay. Thank you. All I wanted was the scale.

The Chair (Mr. David Orazietti): Thank you, Mr. Tabuns. Thank you very much for your presentation.

Mr. Andy Manahan: Thank you.

CANADIAN UNION OF PUBLIC EMPLOYEES

The Chair (Mr. David Orazietti): Our next presentation is the Canadian Union of Public Employees.

Mr. Fred Hahn: I'll just get some water.

The Chair (Mr. David Orazietti): Yes. Good afternoon, and welcome to the standing committee. You've got 10 minutes for your presentation. We'll divide the remaining time up for questions among members. If you want to make a statement for your entire time, then there will not be an opportunity for the deputant to respond. That will be your choice and I'll have to judge accordingly based on the time that's remaining. If you want to state your name for the purposes of Hansard, you can begin when you're ready.

Mr. Fred Hahn: Absolutely, and I will do my best to be pithy.

My name is Fred Hahn. I'm the president of CUPE Ontario. CUPE represents 230,000 workers in the province, with members in health care, social services, education and also in municipalities. We have 80,000 municipal workers who do all kinds of work maintaining roads, delivering social services, collecting garbage, but also operating municipal water and sewage plants. It's on behalf of our whole membership that I'm here but in particular those municipal workers who help to provide clean and safe drinking water.

The intentions of the bill, we think, are quite laudable, both to improve the environment and the economy, considering climate change and the state of provincial

finances, but we think that Bill 72 actually misses that opportunity.

In a major water bill the government hasn't addressed water infrastructure spending, real conservation efforts or the province's boil-water advisories—one just recently announced affecting thousands in Sault Ste. Marie. Moreover, we fear that this opens the door to privatization of water resources.

Rather than repeating a lot of well-known stats, it's clear that we've already gone past the warning signs regarding water in our communities. We're managing, but just barely, a dwindling resource, and there are, we believe, private, for-profit motivated corporations that are poised to take this resource and actually sell it back to us.

Most of Ontario's water system is, we know, reliable, affordable, safe and clean, but it's becoming harder and harder to have that happen. There remain core issues that siphon this critical resource and it's mainly tied to this issue of broken and aging infrastructure. We just heard about this, but we know that some reports put water loss as high as 25% travelling through pipes that are cracked and broken.

Municipalities have to be concerned about delivery, conservation and cleanliness, but the Ontario Association of Municipalities, while reporting that municipalities spend \$1.5 billion a year on water and waste water and while they acknowledge there has been provincial and federal investment in infrastructure, there remains an infrastructure gap—we just heard about it—and it's at least \$1.2 billion a year. This gap could not be funded by property taxes or by user fees.

The only section of the bill that speaks to industrial use—the bill focuses a lot on individual users. It talks about public procurement and building codes, but it leaves out the issue of industrial users like beverage companies, pulp and paper, and laundry industries that actually use 90% of the water in the province. The water billing section, part V of the bill, doesn't make a distinction between industrial or residential users.

Industrial users are not neutral actors in the industry. They're responsible for shortages which drive up demand. For example, in Guelph, the Wellington Water Watchers launched a campaign against Nestlé because that corporation was taking 3.6 million litres of water per day out of the watershed and it was reversing the ground flow of water in the Mill Creek. In addition to taking that water, it should be noted that to manufacture plastic water bottles it takes a huge amount of water, sometimes three to five litres to produce one single litre bottle.

The bill not only doesn't address the issues between individual water users and industrial ones; it doesn't talk about conservation by way of funding the infrastructure gap. We believe conservation should be viewed this way. There are matrices that show that a \$1-billion investment in actual water infrastructure could create as many as 47,000 jobs. This new employment would not only include repairing and upgrading the existing system, but it would have a dual purpose of safeguarding the integrity of our system and creating jobs in difficult economic times.

There are no clear targets or a conservation framework and so it's difficult to conceptualize really what's going to be achieved by Bill 72. Conservation goals amount to another issue, which we fear is the province actually downloading to municipalities responsibilities that have no financial or aspirational support.

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The bill talks about municipal plans, but we think it will encourage mergers instead of instituting best practices. That will mean that in smaller jurisdictions and in northern and remote and aboriginal communities where we have many of these boil-water advisories, there will actually be reduced accountability in the community for the water in that community.

We know that there were 435 boil-water advisories as of May this year, and the bill does nothing to address those issues particular to aboriginal communities. We know that these communities will benefit from water technology which will be developed in the future. We understand that, but the need for system improvement in these communities is now, and there is no built-in incentive to attract immediate public investment to remedy the current situation for those communities.

The merger plans that are being envisioned here we think do little to foster anything except alternative service delivery models or public-private partnerships, and it should be noted that the bill defines a provider as a municipality, person or entity having jurisdiction over one or more services. It doesn't actually make clear that a municipal service provider is a public entity.

The deepest concern we have is actually about allowing a soft point for private market access to Ontario water as a whole. There are thousands of people who already work in the water tech industry in the province, like Zenon Environmental Inc. and Pathogen Detection Systems Inc. While these are Ontario-based employers with Canadian roots, they've been bought out by global industrial leaders and they're no longer Canadian-owned or -controlled.

Reviewing corporate behaviour in other jurisdictions around water gives us a grim picture of what comes from water privatization. Essentially, it's about rising costs, diminished accountability and problems even accessing this life-sustaining resource.

There was a report commissioned, *The Water Opportunity for Ontario*, and that document, from our view, reads like a business plan. I'll quote just part of it: that this "document provides recommendations to create the market conditions that will enable investment in water infrastructure, technologies and services, and will support the establishment and growth of existing and new Ontario water companies."

We think that this expansive language goes far beyond solely investing in the technology required to move forward. I just want to cite one example—well known, I'm sure, to many of you—in the city of Hamilton in the 1990s. The city awarded a contract to Phillips Utilities Management Corp. for water and waste water treatment. Then it faced 10 years of financial and environmental

mistakes and mismanagement. Among the problems that occurred, half of the staff were dismissed or laid off within 18 months. Millions of litres of raw sewage spilled into the harbour. Homes were flooded. Additional costs were incurred. The ministry laid charges against the contractor. The accountability issues were difficult to track down because the corporation changed ownership four times. Finally, it was brought back in-house in 2004.

In conclusion, we would like very much to be able to support an environmental way of moving forward in terms of water preservation, but in this particular piece of legislation we couldn't support it until there were clear conservation targets established and language that's present to prevent rising water costs on residential users alone. There need to be funding mechanisms to address infrastructure deficits, and we need to be clear that we are supporting public ownership of the system to deliver safe and affordable solutions, particularly to northern, remote and aboriginal communities.

There are eight recommendations in our brief. It is quite long and extensive. It's difficult to talk about all the issues related to this very complicated matter in 10 minutes, but I just want to highlight three of our recommendations.

The legislation needs to ensure that water costs are not solely linked to residential customers alone. They use 10% of the water. While we know that conservation efforts should be commended, many families are already facing escalating costs for water and stagnating wages. Water needs to be affordable for all.

Small, northern, remote and particularly aboriginal communities with their water utilities should not be put in the position to be forced to join or amalgamate with other jurisdictions. This will erode accountability for smaller and have-not municipalities for the water that they are responsible for.

Particularly, we need to see an amendment in part III of the bill, the definition of a municipal service provider to be clearly and specifically a public entity.

Thanks for your time and attention.

The Chair (Mr. David Oraziotti): Thank you for your presentation. Questions? The Conservative caucus: You're up first, Mr. Barrett.

Mr. Toby Barrett: Thank you, CUPE. As you say, this is a kind of detailed and very complex issue. I have not had time to read all of your brief during your presentation. I appreciate the recommendations at the end.

There are just a couple of things that maybe could be explained a little further to me. With respect to the importance of stewardship—this is on page 2—you indicate in your introduction that "this proposed legislation will inhibit the endeavour." What areas do I focus on for that? Is that in the recommendations? Could you explain that a little bit more?

Mr. Fred Hahn: There are a number of pieces there, right? I mean, there are no clear targets that will be set out. It's not clear how municipalities will work, particularly without any funding resources or support from

the provincial government in terms of infrastructure, no mechanisms to be able to deal with the 90% of water users, those industrial users, and no ability to raise revenue from them in an effective way to fund the infrastructure gap.

Why would companies provide capital to invest in infrastructure and technology? That sounds very good, but it seems to us that they would only do that if they thought that they could follow through with service delivery and other mechanisms to continue to make profit. That makes sense for companies. We quote from this report, and that's a real concern to us, because from our perspective, water is, and should remain, a public resource.

Mr. Toby Barrett: Okay. I know on page 3—and you've said this—you're concerned that the proposed legislation would lead to higher costs on residential users, and if it's ignoring the industrial users and asking for more equity with respect to that and usage, can we quantify that? Do we have any idea of what costs we would be looking at? I do know that in former Minister Caplan's bill, there were some dollar figures connected with that one. Has anybody costed this out?

Mr. Fred Hahn: In terms of infrastructure investment or in terms of—

Mr. Toby Barrett: You talk about increasing costs. What are we looking at over the next couple of years? Do we have any idea, if this legislation is going to move forward?

Mr. Fred Hahn: Well, if municipalities are responsible for introducing new technologies and upgrading current systems just to fix them—and all of that is done only on the backs of residential users—the costs would be astronomical.

Mr. Toby Barrett: Okay, thank you.

The Chair (Mr. David Oraziotti): Thank you. We need to move on. Mr. Tabuns, go ahead.

Mr. Peter Tabuns: Fred, thanks very much for coming in and making the presentation today.

Could you talk to us a bit about the kind of funding mechanism that should be set up in this bill so that municipalities will be able to actually manage their capital needs?

Mr. Fred Hahn: There are a couple of different ways that we would like the government to consider. Number one: real infrastructure investment that targets money for upgrades of current water systems. We articulated in the brief how those kinds of investments actually generate jobs, which will actually help the economy, so for every dollar invested in infrastructure, it can actually come back, not only as a dollar, but more, to provincial coffers. So that's a clear bang for your buck.

But we think there have to be some funding mechanisms with private corporations that are taking millions of gallons of water out of our watersheds. They are profiting from this water, and we need to ensure that there is a system in which those industrial users are paying for water in a way that that money can also be used to invest in a way that ensures conservation but that also helps to fix infrastructure.

Mr. Peter Tabuns: There was earlier commentary about the total dollar value of the water that's being pumped into the ground right now—let's say \$500 million to \$1 billion a year. Is that consistent with your understanding of the wastage that's happening at this point?

Mr. Fred Hahn: In terms of a dollar value, yes. We knew and quote in our brief that—some reports quote that as much as 25% of the water travelling through pipes is actually lost as a result of aging and broken infrastructure, so it would be easily that much money.

Mr. Peter Tabuns: Thank you.

The Chair (Mr. David Oraziotti): Ms. Jaczek.

Ms. Helena Jaczek: Thank you very much, Mr. Hahn. I certainly want to assure you that our government remains totally committed to public ownership of our water systems, and this proposed act does not change that in any way.

Also, I think it's important to note that we have received many comments from municipalities. Obviously, your membership works for municipalities, and the former chair of Halton region no doubt will be happy to know that Halton has, along with some 12 other major municipalities, submitted comments on this proposed act.

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I'd like to ask CUPE—you're a national organization: Are you aware of any other provincial jurisdictions that have taken what you might consider a more advanced approach to water conservation, or anyone that has done something that you would like to perhaps see in this bill?

Mr. Fred Hahn: We certainly prepared this brief in the Ontario context, but it's absolutely something that I can and will find out from the rest of our organization. We do, as you noted, organize municipal workers in every province across the country, so I will definitely go and see if there are other things that have been done in other places.

But just following up on your question, I'm glad to hear of your commitment to public ownership, so certainly, then, some strengthening in the language of a municipal service provider would be helpful in the piece of legislation.

The Chair (Mr. David Oraziotti): Thank you very much for your presentation. That's the time we have.

Mr. Fred Hahn: Thank you.

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

The Chair (Mr. David Oraziotti): Our next presentation is the Ontario Public Service Employees Union. Good afternoon, and welcome to the Standing Committee on General Government.

Mr. Dan Vincent: Good afternoon, ladies and gentlemen.

The Chair (Mr. David Oraziotti): You have 10 minutes for your presentation and five minutes for questions among members. If you could state your name, whoever will be speaking, and you can begin when you're ready.

Mr. Dan Vincent: My name is Dan Vincent. To my right is Mark Edgerton and to my left is Megan Park.

The Chair (Mr. David Orazietti): Thank you. You can go ahead.

Mr. Dan Vincent: My name is Dan Vincent. I'm the OPSEU chair. This is Mark Edgerton, who is OPSEU vice-chair of the ministry employee relations committee for the Ontario Clean Water Agency. We represent 600 staff who work in over 579 water and waste water treatment facilities, operated and maintained by OCWA on behalf of 180 municipal and First Nations clients.

I've worked for the Ontario Clean Water Agency for 17 years, and I am an operator/mechanic at the Carleton Place water and waste water treatment facilities. Mark has worked for 11 years and is a senior operator at the Kawartha hub—water and waste water treatment. We're here today to offer you the perspective of the operational staff.

We stand solidly in support of water conservation. However, we're the folks who have the job of making our facilities meet all the new standards, targets and deadlines that policy-makers legislate. Most of the time, we don't get any more resources, as in more operational staff, to do the job.

We are here today for three reasons. First, we think the bill needs to reinforce the principle that the ownership and delivery of water and waste water systems remain in public hands. Secondly, we urge a more cautious and inclusive approach to the development of water technologies and their potential commercialization. Third, schedule 3 to Bill 72 amends OCWA's mandate. We are concerned that a greater share of the crown agency's already stretched resources will be allocated away from operations. It is our operations work that ensures Ontario's communities have clean and safe drinking water.

I attended a breakfast panel in June put on by a government relations firm. Bill 72 was the subject of discussion. All three panellists came from the private sector. They were all in the business of promoting private sector solutions to water conservation. In order to do so, they needed to establish the issue as one being too great for governments to solve on their own. They said \$18 billion is needed globally to improve water infrastructure. They spoke of how the financial crisis of 2008 has wiped out the ability of governments to fund water infrastructure. One speaker said that the biggest driver of innovation and technology is, "How do we control these costs: energy, chemicals and labour?"

As you might expect, we have an opinion on labour costs. We, as the staff of OCWA, have been on the receiving end of a concerted effort to drive down wages for a number of years now. I'll speak about this later, but let me say that I don't think the downward pressure on wages has benefited the agency's efforts to bring clean water to our communities' taps. In fact, it has contributed to a 20% job vacancy rate at OCWA.

Back to the breakfast panel in June: There was enthusiastic support for public-private partnerships. There was enthusiastic support for allowing giant multinationals

into Canada via the Canada-European Union trade agreement, currently under negotiation.

The private sector's support for P3s belies the experience in Canada. As you know, in 2004, Hamilton went to a publicly operated water and waste water treatment facility after a horrendous 10-year experience. The private operator refused to take responsibility for the flooding of residents' homes, with 180 million litres of raw sewage discharged.

Halifax tore up its contract with French multinational Suez after the company refused to conform to environmental standards for the cleanup of the harbour. This would have left taxpayers on the hook for any fines if there were violations.

The fact is that privatization leads to job loss and rate hikes. Service and water quality are put at risk.

One has to ask the question: How could it ever make sense for governments, on the one hand, to tell citizens to change their behaviour and use less water because it is a scarce resource, and on the other hand, give over control of this scarce resource to companies whose only interest is to maximize profit?

We urge the committee to add the following commitment to section 1 of part I of Bill 72: to ensure that the ownership, operation and decision-making for drinking water and waste water systems remain public.

My experience of 17 years at OCWA has made me cautious about the relationship between the private sector's promotion of technologies and the risk borne by the public when municipally owned water systems buy these technologies. For example, technologies involving biosolid utilization have been sold to municipalities. The pitch from the private sector is that it will provide municipalities with a revenue stream. The reality is that a viable market may only be around for a couple of years, and subsequently municipalities are left bearing the full cost of the technology.

There is much discussion in this bill about developing a domestic market for innovative technology developed by Ontario researchers and companies. However, my experience has been that this emphasis on private sector solutions to water treatment and conservation can be a pathway for multinationals to enter the Ontario market.

In the last 20 years, the coagulation-flocculation process has gone through technological advances so that the actual infrastructure takes up a smaller footprint and the process works more rapidly. These technological advances have often been developed by university researchers and then bought up by private firms. I know of at least one example of a Canadian firm marketing advanced coagulation-flocculation technology whose parent company is Veolia Water, the giant French multinational.

While nurturing Ontario innovation is certainly a laudable goal, I think this emphasis on the commercialization of water technologies may end up benefiting the multinationals.

Bill 72 will create a new stand-alone corporation, the Water Technology Acceleration Project, known as WaterTAP. We oppose the government's decision to

make WaterTAP a private corporation and not a crown agency.

We note that while WaterTAP will report to the Minister of Research and Innovation, because it is not a crown corporation it will not report to the Legislature and, therefore, to the people of Ontario. WaterTAP's employees will not be public employees and therefore will not be subject to the rights and obligations or the protections of the Public Service of Ontario Act. We also note that the Freedom of Information and Protection of Privacy Act, or FIPPA, as it's called, will not apply to WaterTAP.

We note that the preamble to Bill 72 states: "Water sustains life. Wise stewardship and conservation of water, for both the present generation and for future generations, are of great importance to all Ontarians."

We agree. Therefore it is vital that WaterTAP, a private corporation with a mandate to bring together the public and private sectors to develop technologies to treat and conserve water, is accountable to the people of Ontario and transparent in all its dealings. We believe WaterTAP should be added to the schedule of designated institutions that are covered by FIPPA.

We support the recommendations of the Canadian Environmental Law Association that WaterTAP should have a broadly representative board, including representatives of First Nations communities, and that the provision in the bill to have a private internal review of the corporation every three years is amended so that the review is public.

As we stated at the outset, our third reason for appearing at this committee today is to share our concerns about broadening OCWA's mandate. As you know, schedule 3 to Bill 72 amends the Capital Investment Plan Act, 1993, which established the Ontario Clean Water Agency. On the face of it, giving OCWA a leadership role in the promoting and testing of new treatment technologies makes a lot of sense since OCWA is a crown agency accountable to the people of Ontario. We are one of the larger operators of water and waste water treatment facilities in Ontario.

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Clearly, a sustainable and safe water supply is vitally necessary for Ontario's economic and social well-being. As an agency that belongs to and reports to the people of Ontario, OCWA needs to take a leading role in ensuring the sustainability of our water resources. However, the experience of operational staff makes us concerned about the impact of additional requirements on the agency's operations.

Our experience of the last eight years since the Safe Drinking Water Act was passed is that we are required to test more frequently for more things, but we are given no additional resources to achieve these higher standards—

The Chair (Mr. David Oraziotti): Sorry, sir, I just want to let you know you're at time right now. You've got about 30 seconds to wrap it up, and then we'll move to questions. You may have an opportunity to express anything else you want through questions.

Mr. Dan Vincent: Okay.

If this is the case, then how does the government think OCWA is going to have the funds to meet the expanded mandate outlined in schedule 3 to Bill 72, which reads, "financing and promoting the development, testing, demonstration and commercialization of technologies for the treatment and management of water, waste water and stormwater"?

We strongly recommend to this committee that any amendments to OCWA's mandate must be accompanied by additional resources. We do not want to see the operation and management of drinking water and waste water systems that three million people in Ontario rely on suffer from the promotion and development of technologies that the private sector will benefit from.

The Chair (Mr. David Oraziotti): Thank you very much. Mr. Tabuns?

Mr. Peter Tabuns: First of all, thank you very much for coming in today and making a presentation. It's been quite useful.

Could you talk a bit more about WaterTAP being a crown agency and how you would see that structured?

Mr. Dan Vincent: Right now, the idea is to have it as a private entity, where the public doesn't have the opportunity to voice their concerns around it. If the public has the opportunity to voice their opinions on how Ontario is utilizing the water within Ontario itself, we will have more diverse opinions coming out, everybody will have the opportunity to have their say, and everybody will have the ability to bring it forward to let everybody know what issues may be arising from it.

The Chair (Mr. David Oraziotti): Ms. Jaczek.

Ms. Helena Jaczek: I would like to reiterate that our government is certainly committed to public ownership of our water systems in Ontario, just to lay that to rest.

I don't really have any specific question. I certainly am aware of the issues with OCWA. The chair of OCWA is my former boss at the region of York, and he certainly made me and, I know, staff at the Ministry of the Environment well aware of some of the issues that you've brought forward.

The Chair (Mr. David Oraziotti): Mr. Mauro.

Mr. Bill Mauro: Thank you for your presentation. Can you expand a little bit for me on the role that OCWA plays with First Nations communities?

Mr. Dan Vincent: We are a crown corporation which supplies the services of water and waste water to any community which requires it. Most of what we're seeing right now for First Nations is boil-water orders. We've been mandated to go in to rectify the situations.

Mr. Bill Mauro: So you're not currently operating—

Mr. Dan Vincent: We do have some First Nations systems. Actually, I'll leave that—

Mr. Bill Mauro: I'm just trying to create the link, because the previous group made mention of the number of boil-water advisories. I think you said 450—it was a very large number. I'm assuming that's a national number.

Interjection.

Mr. Bill Mauro: Four hundred and thirty-five, currently? Nationally?

Mr. Fred Hahn: In Ontario.

Mr. Bill Mauro: In Ontario, currently there are 435 boil-water advisories. It's a staggering number—

Mr. Mark Edgerton: That might not be a correct number right now, but over a year's time—

Mr. Bill Mauro: Close enough. It's a staggering number. How many of those are First Nations? I'm curious.

Mr. Dan Vincent: Of the 435?

Mr. Bill Mauro: Yes.

Mr. Dan Vincent: Those were all First Nations?

Mr. Fred Hahn: No, those were all the boil-water advisories.

Mr. Dan Vincent: All the boil-water orders?

Mr. Bill Mauro: Do you know how many were—

Mr. Dan Vincent: Not of the First Nations ones per se. They tend to be at a far higher rate out of First Nations than they are out of most urban municipalities.

Mr. Bill Mauro: And how many contracts does OCWA have with First Nations communities?

Mr. Dan Vincent: It would only be a guess at this point.

Mr. Mark Edgerton: It varies.

Mr. Dan Vincent: Yes.

Mr. Mark Edgerton: We're a for-hire agency; we're on a cost-recovery basis.

Mr. Bill Mauro: You do one of my communities as well, in Atikokan.

Mr. Dan Vincent: Yes.

Mr. Bill Mauro: Okay. Thank you.

The Chair (Mr. David Oraziotti): Mr. Barrett, go ahead.

Mr. Toby Barrett: Thank you, OPSEU. You mentioned Hamilton. I guess that was Phillips Environmental.

Mr. Dan Vincent: Yes, it was.

Mr. Toby Barrett: Stuart Smith was in that.

Mr. Dan Vincent: I don't know—

Mr. Toby Barrett: Yes, the former Liberal leader.

Mr. Dan Vincent: I do remember the fact of it being Phillips Environmental.

Mr. Toby Barrett: They didn't take responsibility for the sewage coming into homes. With Redhill Creek, there have been other problems in Hamilton. Does the public sector take responsibility for that now?

Mr. Dan Vincent: Through that now? Yes. Within our own Ontario Clean Water Agency, if it's deemed that we were the reason for it, then yes.

Mr. Toby Barrett: If there's reason, yes. I know that my house in Brantford had a sewage backup and nobody paid for that, and that's public.

Joyce?

Mrs. Joyce Savoline: Just quickly again on the Hamilton situation—first of all, thank you for being here. That whole scenario evolved around a sole-source contract, so there was not really any competitiveness or openness about how it was going to be managed. It was sort of just given over to Phillips. Do you have any comment about sole-sourcing? Should the government go with something like this? Is sole-sourcing with the private sector a good idea?

Mr. Dan Vincent: No, by no means. We tend not to look at sole-sourcing as being a true ability for any municipality to look at what options are there for them, where they may get the best bang for the buck. Just because it's the cheapest figure that's coming in, it doesn't mean that you're getting the best.

Again, Phillips came in with no track record. When they walked in the door, they were fairly new in Canada at that point in time. They got sold a very good bill of goods. The problem was, there was no track history that came with them, and what they found out 10 years later was what they ended up with.

What they have with a crown corporation—everybody knows who OCWA is. They know what we do. They know we'll always be there.

Mrs. Joyce Savoline: Transparency is really important.

Mr. Dan Vincent: That's right.

Mrs. Joyce Savoline: Thank you.

The Chair (Mr. David Oraziotti): Thank you for your presentation. That's the time.

EPCOR

The Chair (Mr. David Oraziotti): Our next presentation is EPCOR. Good afternoon. Welcome to the Standing Committee on General Government.

Mr. John Gorman: Thank you.

The Chair (Mr. David Oraziotti): You've been here for a little while so you're familiar with the process. You've got 10 minutes for your presentation.

Mr. John Gorman: That was very interesting; thank you.

The Chair (Mr. David Oraziotti): And five minutes for questions. Just state your name and you can start when you're ready.

Mr. John Gorman: Very well.

Thank you for having me. My name is John Gorman and I am responsible for stakeholder relations for EPCOR in Ontario. I'm pinch-hitting here this afternoon for Doug Walton, who has a medical matter that he had to take care of this afternoon.

I'd just like to tell you briefly about EPCOR, in case you are not familiar with us. We have over 100 years of experience helping municipalities and large industrial clients design, build, finance and operate water and waste water facilities in the US and Canada. We operate 45 facilities that treat water and waste water and we deliver water and waste water services to over 70 communities.

I would say that these partnerships in all instances have allowed communities to maintain the public ownership and regulation of their local infrastructure while having the benefit of gaining access to EPCOR's expertise that it derives from the various markets it operates in. We are wholly owned by the city of Edmonton.

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I'd just like to take a moment here to emphasize, especially following on the heels of two union presentations, that we work, in every instance, with the unions through unionized representation. We have no desire in

the Ontario market to own municipal infrastructure. Our ambition for this market is to provide our expertise in the design, finance and operation of water infrastructure.

To that end, we've been watching the Water Opportunities Act and the Ontario market with great interest. This is not a market where large infrastructure companies like EPCOR have been able to participate and lend their expertise. I think that's due to the absence of a framework in this province that allows the participation of companies like EPCOR. I think the second part of that is that municipalities have a very entrenched way of running their operations and managing their assets and their infrastructure, which has largely been to the exclusion of partnerships with the private sector and AFPs.

We have spent the last 18 months trying to involve ourselves in the deliberations around this developing act. I have to say that we've had a wonderful experience in terms of being included in the deliberations. Unfailingly, we've had a great response from everyone, from ministerial staff to departmental people that we've been working with, and it's been a good experience.

I'd like to use the remainder of my time to talk about the Water Opportunities Act from the perspective of whether or not it encourages all of the key stakeholders to do their bit to achieve the goals of the act. Before I get into that, as just general covering, we are strongly supportive of Bill 72. We see it as a progressive step towards creating a framework here in the province which will be key for large companies like EPCOR to come in with expertise and money and participate in the market and help the province reach its goals in terms of this act.

However, the question of whether or not all of the stakeholders are being made to toe the line in terms of reaching the goals and objectives is one where we feel that the act does not go far enough fast enough. We think there's more to be done to make key stakeholders actually walk the talk in this act.

I'm going to look at three key stakeholders here: municipalities, who are the owners of the infrastructure; industrial users, as were touched on by CUPE earlier; and large infrastructure companies like EPCOR and the role that we can play in this market.

If I could start with municipalities, the owners of the infrastructure, I had some detailed notes here about two areas where we would recommend that there be some tightening around targets. They had to do with full-cost accounting and conservation targets. But these two issues have been covered by the previous speakers, so I just want to make a general statement about this act and about municipalities.

As I said, large infrastructure companies like EPCOR have not been participating in this market and bringing their expertise and capital from other markets into this sector to help create jobs and bring innovative solutions simply because there hasn't been an appetite in this market for municipalities to work in partnership with large corporations. This act, while it's going to lay out a framework that companies like EPCOR will value and be able to make a determination on as to whether or not they can be involved in this market, is taking a very soft

approach to managing municipalities to the point where they want to look at innovative solutions and partnerships. We would encourage this committee to look at doing things like introducing hard targets on the conservation side and more aggressive measures to make municipalities move to true cost accounting so that they can break out of the conventional way that they've been doing things and look to more aggressive and innovative solutions.

When it comes to the commercial stakeholders, the industrial stakeholders, as the representative from CUPE mentioned, the Water Opportunities Act is silent on what these large commercial water users could be doing to help meet the goals of the act. While we understand that the government already has the mechanisms that it needs at some point to be able to compel very large water users to implement conservation and reuse measures, we think that the Water Opportunities Act is the place to do that and that the opportunity is now to set measurable conservation and reuse targets for industry.

This is an area where EPCOR has a great deal of experience in working with large water users in the private sector to implement solutions and infrastructure that reuse water. In turn, by reusing the water, it frees up the water capacity of the municipality, and it thereby ensures that the municipality doesn't have to build new infrastructure and can divert the capacity to existing developments and future developments.

So the bottom line here is, large commercial users of water have their role to play in conservation and innovation, and the Water Opportunities Act is the opportunity to do that. I'd encourage the committee to look at measures that are going to encourage or mandate industry to do so.

Lastly, the last stakeholder, of course, large infrastructure companies like ourselves—the bottom line is that for an EPCOR to come into the province and invest money, capital and bring over expertise, there has to be a framework in place that shows that there's going to be opportunity to work here.

Our experience to date, and the experience of other companies like EPCOR, in this sector has been very poor. Municipalities that have tried hard or attempted to do a form of AFP or private-public partnership have been unsuccessful for various reasons, and so there is no good example of how municipalities can work with companies like EPCOR that do have this expertise from other markets to drive innovation.

The Chair (Mr. David Oraziotti): Thanks very much for your presentation.

Ms. Jaczek, you're up first.

Ms. Helena Jaczek: Thank you very much, Mr. Gorman, for coming to represent EPCOR at short notice. Certainly, we did hear a number of the points you made during the consultations, even prior to the introduction of the bill—sort of a frustration, in a sense, with municipalities not wanting to move to more innovative solutions.

I'm wondering if you could, from your experience, give us some ideas on how to, as an example, promote some demonstration projects, perhaps with industry in

some way, to kind of assure those municipalities that are a little reluctant to move to a certain new technology that they can do so. Do you have some examples you could give us of where this has worked?

Mr. John Gorman: Thank you for the question. As I mentioned, we have a great deal of experience in other markets, implementing solutions that are innovative and working in sort of a public-private partnership.

In Ontario, with the large water users, there are a number of examples of cities where—if I can use a specific example, in the city of London, there is a very large water user that uses about seven million litres of water a day. I think that's the equivalent of about 5,000 homes. They use all of that water and they put it into the river. As a result, they pay a fine of \$2 million per year. So they're using vast amounts of water, and they're paying a fine of \$2 million per year to jettison the water out because, from a private sector corporate perspective, it's cheaper and they can't justify the investment of a closed-loop system to reuse their own water.

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What we need to see is the guidance, intervention or participation of the government in bringing the municipality together with the large user to find a solution that is going to satisfy the municipality, because they're at risk of losing a fair amount of revenue from this company actually putting in environmentally friendly infrastructure, and satisfy the company as well in terms of being able to meet its recoup on the expenses. So there are these forces that are at odds all over the province.

The Chair (Mr. David Oraziotti): I'm going to need to stop you there. Thanks.

Mr. Barrett, go ahead.

Mr. Toby Barrett: Thank you to EPCOR for presenting. Your work, I assume—primarily in the west, you're involved with the oil sands and some mining operations?

Mr. John Gorman: Yes, we do help operate some of the water infrastructure that is used for those—

Mr. Toby Barrett: So that would be, like, potable water for employees and treating waste water—

Mr. John Gorman: Absolutely, yes.

Mr. Toby Barrett: —from humans. But you're also involved, say, with the mining industry, with dealing with heavy metals and chemicals and things?

Mr. John Gorman: Yes, we are, and in treating that type of waste water and bringing it back up to quality standards. Right now, we're doing a very large reuse project for Suncor, which is creating a closed-loop system for them and enabling them to use water very efficiently in their operations.

Mr. Toby Barrett: And that would be right in the oil sands?

Mr. John Gorman: Yes.

Mr. Toby Barrett: Because we hear so much—I think, what, 18% of the oil the United States uses comes from the oil sands, but there's also a pushback on pollution and what have you. Could you just tell us a bit more about what's going on in the oil sands as far as water—

Mr. John Gorman: I'm sorry, that's not my real area of knowledge or expertise. But I—

Mr. Toby Barrett: But do you do any work—oh, go ahead.

Mr. John Gorman: I just will say that this is a reason why it's so important to bring in expertise from the companies and other players that are involved in other markets, because the lessons learned over there can be used in other markets, like Ontario. Ontario, as I mentioned, is a very insular place in terms of the way it manages its water and its water infrastructure.

Mr. Toby Barrett: Do you work with the mining industry in Ontario?

Mr. John Gorman: No, I don't. I don't believe so.

Mr. Toby Barrett: Thank you.

The Chair (Mr. David Oraziotti): Thanks, Mr. Barrett. We've got to move on.

Mr. Tabuns, go ahead.

Mr. Peter Tabuns: First of all, thank you very much for coming in and presenting today.

If I understood your comments, you see this bill as providing an opening for large water companies to become involved in the provision of water services in Ontario, including the operation of municipal water systems?

Mr. John Gorman: That's right, yes.

Mr. Peter Tabuns: What part of this bill provides that opening?

Mr. John Gorman: I would say that the potential for the bill to provide the opening has to do with whether or not municipalities actually change the way that they approach managing their assets and their infrastructure. We have two points about that. One is that we feel that this act is going to get the municipalities there eventually, to the point where they will be looking at innovative ways to do things and looking for expertise outside of the province. But it's going to take too long to get there, in our view, so harder targets have to be introduced.

Mr. Peter Tabuns: Why would a harder target for conservation drive a municipality to have an outside corporation run its water system?

Mr. John Gorman: I'm sorry, are you asking why the two go together?

Mr. Peter Tabuns: Yes.

Mr. John Gorman: Okay. I think the sooner the municipalities truly understand what they have to do to hit concrete targets, the sooner they're going to realize that they're going to need the expertise and the technologies that this act is trying to promote to reach those targets.

Mr. Peter Tabuns: Couldn't those municipal corporations, in fact, simply hire an outside water company as a consultant or, on their own, secure technologies for reduction of water consumption, without turning over their water operations to another company?

Mr. John Gorman: Yes, absolutely, they could.

The Chair (Mr. David Oraziotti): That's the time for the presentation. Thank you very much for coming in today.

Mr. John Gorman: Thank you.

ONTARIO SEWER AND WATERMAIN CONSTRUCTION ASSOCIATION

The Chair (Mr. David Orazietti): Our next presentation is the Ontario Sewer and Watermain Construction Association. Good afternoon, and welcome to the Standing Committee on General Government. You've got 10 minutes for your presentation and five for questions. If you can start by stating your name, and you can begin when you're ready.

Mr. Joe Accardi: Good afternoon, committee clerk, members of provincial parliament and ladies and gentlemen. My name is Joe Accardi. I'm the executive director of the Ontario Sewer and Watermain Construction Association. A little bit of background: I'm a licensed professional engineer with a degree in civil engineering, and I've worked in the sewer and water main industry for 12 years. I would also like to introduce Susan McGovern, who began with our association in early summer 2010, and holds the position of assistant executive director.

The OSWCA and its board are eager to provide advice and assistance to the committee with respect to Bill 72. We want to ensure that it is passed and regulations are drafted and implemented in a timely fashion. It is imperative that the government gets on with the business of ensuring clean water now and for future generations.

Both Susan and I are very pleased to be presenting to the Standing Committee on General Government in support of Bill 72, the Water Opportunities and Water Conservation Act, 2010.

Throughout this presentation, we will refer to the Ontario Sewer and Watermain Construction Association as the OSWCA.

A little bit about who we are: The OSWCA has been a champion of environmental protection and best practices in clean water management and job-site safety. We have represented the sewer and water main construction industry in the province of Ontario since 1971, almost 40 years. We represent over 800 companies across Ontario, including contractors, manufacturers, distributors and consulting engineers. Collectively, we perform over \$1 billion a year in capital projects to ensure clean, safe drinking water and environmentally responsible waste water treatment and disposal. The economic benefit our industry brings to Ontario is substantial.

We have handed out our brochure with additional details regarding the association, which you can refer to at your leisure.

As an organization, we are committed to the following: addressing issues with a unified voice; developing Ontario's clean water and waste water systems; ensuring a plentiful supply of drinking water for future generations; supporting and preserving our lakes and rivers through environmentally responsible waste water disposal and treatment; developing new and emerging Ontario water technologies and services; and partnering with all levels of government, the private sector and consumers to ensure Ontario's vital clean water and environmentally responsible waste water systems are a top priority.

Some water facts for the province of Ontario: We all know Ontarians care about the quality of our drinking water, and maintaining a plentiful, healthy water supply demands a continuous investment by government and consumers. Investment is needed not only to expand municipal water and sewage systems to meet growth challenges, but also to renew aging infrastructure in order to ensure safe and healthy communities. Unfortunately, and over time, there has been a steady decline in water systems across Ontario as the infrastructure is operating long beyond its original life expectancy. Not enough attention has been given to maintenance and rehabilitation.

Aging pipes have a direct impact on the quality of water reaching the consumer and also result in costly leakage rates. Many municipalities are currently working with leakage rates that are as high as 30% to 40% of costly treated water.

It is estimated that Ontario's water systems will require \$30 billion to \$40 billion of investment over the next 15 years. The public sector, private sector and consumers can play an important role in water conservation, which will help reduce the cost of clean, fresh water from source to tap.

Since the 2000 Walkerton tragedy, most reports have concluded that Ontario needs to move to develop full asset management plans, implement full-cost pricing, meter consumers to encourage conservation, identify and correct leaks, put in place long-term capital campaigns, and ensure dedicated reserves from collected water revenues. The OSWCA has always supported these recommendations and will continue to do so.

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For many years, the OSWCA has advocated for the proclamation of SWSSA, stating that the development of effective regulations under this act was the only thing missing to move forward with the recommendations by the O'Connor commission. Justice O'Connor clearly stated, "Only when the municipalities are required to assess and recover the full cost of operating and maintaining sewer and water services will the public be assured."

I'll now mention a little bit about some of the things we support. The OSWCA continues to support the following initiatives, of which we are happy to see many, but not all, included in Bill 72:

- (1) an understanding of the full cost of water and waste water systems with a focus on sustainability plans;
- (2) comprehensive system audits to determine the actual condition of underground infrastructure, the remaining life span and the cost of replacement;
- (3) over time, full-cost pricing in order to sustain water and waste water systems;
- (4) metering water services to encourage water conservation and long-term sustainability of water systems and resources;
- (5) maintenance programs to reduce leakage rates and increase systems efficiencies;
- (6) dedicated financial reserves to upgrade and maintain healthy systems;

(7) adequate government financial resources dedicated over the long term to ensure sustainability of these systems; and

(8) investing in the elimination of cross-connection of sanitary and storm sewers, ultimately contributing to keeping Ontario's lakes and rivers clean.

The OSWCA agrees with a conservation focus as a way of sustaining water resources in Ontario. The OSWCA also agrees that public agencies, including municipalities and government ministries, should prepare water conservation plans, achieve water conservation targets and ensure that goods and services purchased consider technologies that promote the efficient use of water resources. The regulations will need to be strict with respect to defining measures and targets to demonstrate progress. Much work will need to be done with the municipal sector to ensure that conservation measures play an important role in municipal infrastructure planning.

The OSWCA agrees with regulations prescribing information that must be included on or with municipal water bills. This will go a long way to helping consumers achieve conservation targets, as you need to understand what you are using before you can conserve.

Bill 72 is correct to focus on creating economic development and clean technology jobs in Ontario. It is important to identify opportunities to demonstrate and implement new and emerging Ontario water technologies and services with a focus on global commercialization.

While adding some important new provisions, Bill 72 has dropped the essential elements outlined in SWSSA requiring the development of plans for full-cost pricing. The regulations' powers are certainly broad enough to allow for such requirements in the future, but we feel that these should be core principles of the legislation. We also feel that the Minister of the Environment should be able to mandate performance indicators and targets to ensure that conservation targets and system optimization are reached.

The OSWCA would like to see Bill 72 go further in that all municipalities must prepare, approve and submit to the Minister of the Environment municipal water sustainability plans. We would also like to see the minister establish hard performance indicators and targets for those services to ensure that conservation targets and system optimization are reached by addressing aging infrastructure and growth challenges.

The OSWCA likes the idea of the Minister of the Environment preparing reports on various matters related to the success of this act, but we would like to see these reports more frequently as a sort of continual report card on the state of sewer and water maintenance and rehabilitation across the province.

Finally, we do not see a benefit for developing a new corporation with the objectives of promoting the development of Ontario's clean water sector. The province of Ontario already supports OCWA and the Ministries of Research and Innovation and of the Environment. We see this new organization as slowing the process of de-

veloping and implementing the regulations, as well as an unnecessary cost to the taxpayers.

The province of Ontario and the federal government have already put millions of taxpayers' dollars into institutions across the province with the sole mandate of commercialization. Places like MaRS and other centres of excellence across the country already exist, are up and running and are capable of providing commercialization functions as outlined in Bill 72. They are capable of developing, testing, demonstrating and commercializing innovative technologies. They are capable of expanding business opportunities on a global scale.

The Chair (Mr. David Orazietti): I'm going to need to stop you there. That's time. We're a bit over. I appreciate it. You're going to have an opportunity to respond with further information to the questions.

The Conservative caucus is up first, so if you want to go ahead: Ms. Savoline?

Mrs. Joyce Savoline: Thank you, Mr. Accardi and Ms. McGovern. I like some of the suggestions you're making—not all of them, but some of them.

I'm reading here that you're saying that it's appropriate to have a completely rate-supported budget from an operating budget so that there's transparency in what you need for those billions of dollars' worth of infrastructure in water and sewer.

Mr. Joe Accardi: To an extent. If I can just give you an example on how, to answer that question—thank you for the question. I'll give you an example. In the city of Toronto, we did some research on how that works out in being open.

Mrs. Joyce Savoline: The city of Toronto is not necessarily a good example, with all due respect.

Mr. Joe Accardi: I'll explain it to you in terms of the numbers they got. It sums up the numbers.

In the last three years, the city of Toronto has increased their water rates by 9%, every year for the last three years. On top of that, we looked at their budgets. Three years ago, their water and sewer rehabilitation budget was \$125 million to \$130 million. Last year, which is within three years, it was \$330 million. They obviously thought, through their asset management department, that funding needed to be dedicated, and it was reserved solely for increasing the budget and doing more work in the city of Toronto. That was through their water rates, which they believe—

Mrs. Joyce Savoline: So it's important to keep the two budgets separate so that the rate budget doesn't get siphoned into the operating budget to be used for other things.

Mr. Joe Accardi: One hundred per cent. We want dedicated reserve funding for—

Mrs. Joyce Savoline: Okay; that's my point. Do you also believe that it's important to have a sewer surcharge so that there is some measure of money being dedicated in that budget, based on the amount of water that's taken into the home? Almost all of it is going to be going back out again, whether it's through the tap running or the toilet being flushed or the pool being emptied or what-

ever, but somewhere, that sewer water needs to be treated as well. There have been implementations of sewer surcharges, under great resistance. Do you believe that's an appropriate charge?

Mr. Joe Accardi: Quite frankly, I think that in its infancy stage, the metering system is going to take some of that away. If the municipalities have 100% of their systems metered, then the more data collection the engineering department does in their department, they can better understand where the water's going. Metering what's entering is probably an easy way, or a more informative way, for municipalities to better collect data and to make better decisions on their infrastructure. So I think metering the water right now is a good solution for that.

Mrs. Joyce Savoline: I'm asking, in addition to the metering of the water coming in, to have a charge that is applicable to what the approximate is, based on the water coming in, for the water going out, so that you also have enough money to treat the sewage—

Mr. Joe Accardi: That's a very good question. I don't really know the answer—

Mrs. Joyce Savoline: Some municipalities are doing it.

Mr. Joe Accardi: I know some are. Obviously, we would support as much revenue as required to get into the industry. Quite frankly, the deficits are so large in some of these municipalities that whatever they can get and put back in and generate back into dedicated reserves would definitely be beneficial for all of us and not just people operating the systems.

Mrs. Joyce Savoline: Thank you.

The Chair (Mr. David Orazietti): Thank you for your response.

Mr. Tabuns?

Mr. Peter Tabuns: First of all, thanks very much for coming down and presenting today. I asked the question of a previous presenter: Does this bill, in your opinion, open the door to large corporations to come in and operate and own municipal water systems in Ontario?

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Mr. Joe Accardi: Thank you for the question. As an association, we don't really support that as coming through. However, I don't see that right now. What I see in the industry on the tech side and the engineering side is, I see municipalities moving more towards asset management on their own. I see them working more towards understanding what their systems are capable of doing on their own. I think they're getting more engaged in going to conferences and finding that out. So as much as it appears it may, I don't think that municipalities are going to move to that, as I heard your comments last time. I think they're more in tune to hire consultants to come in and do that type of work, and that's what we see in this.

Mr. Peter Tabuns: Okay. You cited a number of about \$35 billion to \$40 billion in terms of the capital funding deficit. Do you have a report you can provide us

with that details how that calculation was done, to provide to the whole committee?

Mr. Joe Accardi: Yes, we can do that.

Mr. Peter Tabuns: You can do that?

Mr. Joe Accardi: We got that from the Conference Board of Canada, so they have that study.

The Chair (Mr. David Orazietti): Thank you. That's time.

Ms. Jaczek, go ahead.

Ms. Helena Jaczek: Yes, thank you very much for coming in and giving us a very clear idea of the position of your organization. Certainly, as I look towards your recommendations—you didn't quite get to them—

Mr. Joe Accardi: Yes; sorry about that.

Ms. Helena Jaczek: But certainly I want to reassure you and the other stakeholders, of course including municipalities, that it's the government's intention to consult at every stage of this, including, when we get to them, the regulations. So I just wanted to make sure you were reassured.

You've also talked about baseline data and you've talked about metering. You have a statement here, though, that perhaps you could expand a little bit more: You'd like to see the minister establish hard performance indicators and targets for those services to ensure that conservation targets and system optimization is reached etc. Could you just maybe outline a couple of the best performance indicators that you would like to see?

Mr. Joe Accardi: Thank you for the question. There are a few performance indicators that are going around right now. There are a few companies that work with some of our membership—and our membership is not just the contractors; it's the consultants and municipalities. What they're doing: A prime example is, say, leakage rates. Currently there are a few companies that go around establishing technology that can quantify the leakage rates in your system. So a lot of municipalities in southwestern Ontario—it's probably one of the bigger hubs; Hamilton and York region are two of them—are doing a great job at really understanding where their leakage rates are in their system, and they're quantifying those numbers. They're using that data to judge when their systems need to be rehabilitated.

What the concept is on there is that they understand that the quality of the water is not only what leaves the facility; it's also what's transported through the system. What they're realizing is that the issue may not be meeting the industry standards on the quality of water that leaves the facility but the issue is transporting it through their system. That's one of the examples.

Why we see metering as a positive step: We feel that metering, once again, like I said, allows municipalities to collect a little bit more data to better understand, in conjunction with the data they're collecting with the leakage rates, their actual system. So what they're looking at is, "We are providing X amount of litres; X amount is being consumed. Is there a deficit?" They can better understand how their system works. We see that as a positive thing.

I hope that answers your question.

Ms. Helena Jaczek: Yes.

The Chair (Mr. David Orazietti): Thank you for coming in today. That's the time for your presentation.

ONTARIO ENVIRONMENT INDUSTRY ASSOCIATION

The Chair (Mr. David Orazietti): Our next presentation is the Ontario Environment Industry Association. Good afternoon. Welcome to the standing committee.

Mr. Alex Gill: Good afternoon.

The Chair (Mr. David Orazietti): You have 10 minutes for your presentation and five for questions. You can start by stating your name for Hansard, and you can begin when you're ready.

Mr. Alex Gill: Fantastic. My name is Alex Gill. For the last five years I've been the executive director of the Ontario Environment Industry Association, or ONEIA. This is my colleague Alex Keen, who's the chair of our water subcommittee and also the CEO of Altech, one of our leading air and water technology firms.

On behalf of the association, I'd really like to thank you for the opportunity to offer you comments today. As you may know, ONEIA is a member organization representing Ontario's environmental technology, service and product firms. This sector is a significant economic force in Ontario. It accounts for about \$8 billion of GDP and employs about 65,000 people; that's the broader environment sector. More than \$1 billion of this amount comes from the export of environmental goods and services. We expect this number to grow in coming years. Our estimates peg the worldwide market for this at about \$700 billion a year and growing, so there's a tremendous opportunity for Ontario to take advantage of here, and we know that a significant portion of this international market is going to be in water-related services, goods and technology.

This is going to be good news for our members because we represent a very broad swath of the water sector, including firms that specialize in conservation, software, consulting, technology firms—a very broad cross-section of the economy, and in this light the Water Opportunities Act presents a tremendous opportunity for our province for environmental and economic gain.

One of the challenges we have is that there isn't a lot of research in this area that says that this is the best way we can move forward in partnering government and industry.

We're very fortunate, however, that, back in 2009, with the support of the Ontario government, we partnered with consulting firm Deloitte to study the main barriers to growth for environmental and clean-tech firms across the province, and we provided a copy of this report to the members of the committee. This report was well received by all parties on environment industry day—I believe many of you were there—and it was quickly endorsed by the environment minister of the province of Ontario.

These findings offer some excellent advice you may wish to take under consideration as you move forward

with the proposed act, specifically the corporation WaterTAP, and we're going to be spending most of our time today talking about that.

I'd just like to quickly highlight four key findings from this report, and I'm going to turn it over to my colleague for a little more detail.

The report found that governments do best when they do not pick winners and losers among specific technologies, but that they create broader conditions that allow all businesses to succeed in a specific sector.

We found that the government's existing purchasing power, for example, green purchasing standards throughout government, can be an excellent way to support pilot projects and help Ontario companies land that first demonstration project or major client.

We found in this report that outcome-based regulations are often a better way to incent innovation than prescriptive regulations.

Finally, government programs and other initiatives are often ineffective for small to medium-sized companies that make up the bulk of the companies in this sector because it's very hard to tailor those programs to reflect the reality of those small firms.

I'd like to turn it over to my colleague Alex, who can offer some perspective on behalf of the association and his firm.

Mr. Alex Keen: I'd like to also reinforce the point that Ontario has a tremendous opportunity here. Companies like mine know that there's a huge Canadian and also worldwide market available for our technologies and services. The provisions of the proposed act—and specifically we're talking about the WaterTAP corporation—can help us with respect to these opportunities, but only if we get it right.

We know that the province is breaking new ground with corporations such as this and there are only a few other jurisdictions around the world that have taken a somewhat similar approach; namely, Germany, the Netherlands and, to a certain degree, Singapore. The first advice we'd like to offer is that we study these jurisdictions closely so that we learn from their successes and their failures.

With this in mind, I'd like to stress three key things for you this afternoon.

First, WaterTAP will be a stand-alone corporation that will operate fairly independently of the government. This can be a good thing, but we would ask that you pay particular attention to the governance of this corporation to ensure that the practical concerns of industry are fairly represented and that it doesn't unintentionally create specific barriers to the industry.

Bill 72 is as much a competitive and economic initiative as it is a policy and regulatory one. So we would expect and hope that WaterTAP would include representatives from industry on its board. We would suggest that a significant portion of the board be drawn from water firms themselves.

Secondly, we know the act is somewhat vague on many of its provisions, and we would expect that the

heavy lifting would be done in the regulatory phase coming up, as well as through the programs developed through the WaterTAP. In both these phases, we would strongly recommend that the government engage with the environmental sector to get it right the first time.

We're prepared to help by offering the expertise of our firms around these issues and the potential challenges for the framework and implementation of the corporation. We would also pull together multi-stakeholder groups that can provide the benefit of dealing with a one-window multi-stakeholder organization.

As Alex pointed out, ONIEA has a broad membership base. In addition to that, this would reduce the implementation times and improve the effectiveness of the consultation process.

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Third, and most important, we would like to talk about how we can ensure that WaterTAP stimulates innovation, which would be its objective. We have devoted considerable attention in the past years to encouraging innovation through universities. This is very important to Ontario's future, and employers in firms like mine will hire these well-trained graduates, with the new ideas and approaches that will come with them. One of the challenges, though, is stressing that academic research takes a long time to come to the marketplace and grow with new companies in the start-up phase. So one of the things we recommend is that we find ways to encourage research within the existing companies that are practising in Ontario. This would allow the technologies and approaches to grow within a company that already has proven sustainability, existing customers and other business support systems. This would greatly increase the chance that such investments would quickly result in commercial outcomes, employment and growth for Ontario.

We would also encourage the government, as it moves to implement the act, to recognize the importance of the service sector of the environment and clean-tech sector. We often are interested in the latest technology and promoting the newest, but we have to remember that services account for approximately one half of the \$8-billion environmental sector. We would urge the government to recognize this reality as it begins to utilize and develop a WaterTAP corporation and to engage and promote the water sector.

Finally, we need to find ways to encourage pilot projects through existing spending. We know we are all in a period of fiscal tightening, but one of the things a government can do in such a period of restraint is to use the investments that it is already committed to making to better effect. We know that the province will have to invest in refurbishing schools, hospitals and other government facilities—I've lost my place there.

The Chair (Mr. David Oraziotti): That's about time. If you want to take a minute, 30 seconds, and wrap up.

Mr. Alex Keen: I think, basically, as a final comment, the success of WaterTAP will come from encouraging creative solutions to water problems, and this includes new technology as well as looking at water in new ways

and new approaches and applications of existing technologies. The key to this will be stimulating the market to think differently about water, and that market will develop into a business for Ontario companies.

The Chair (Mr. David Oraziotti): Okay. Thank you very much for your presentation. Mr. Tabuns, you're up first.

Mr. Peter Tabuns: Thanks very much for coming and making this presentation today.

I want to go back to this point you raised recognizing the importance of the service sector. Are you suggesting that this bill will open the door to water supply systems being operated by large private corporations as opposed to the existing municipal water corporations?

Mr. Alex Gill: If you want to take a stab at it, I'll weigh in.

Mr. Alex Keen: Go ahead.

Mr. Alex Gill: Sure. I think in our initial feedback, that wasn't where we were going. The key piece we want to remind people about when it comes to the service sector is that we all have a bias towards the tangible. So we see a lot of government policy that's driven towards, "Is there a factory where people can put bolts in an assembly line?" What we don't want to neglect is that there are thousands of people in Ontario who are making money on the environmental service side who could be designing water systems for the developing world. There are entire rooms full of engineers in the GTA who are doing just that. We want to make sure that frame is also front of mind.

Mr. Peter Tabuns: So you don't see this bill, then, as opening the door to privatization of municipal water systems.

Mr. Alex Gill: I don't think so.

Mr. Alex Keen: To a certain degree, our presentation is centred around WaterTAP because, for one thing, it's one of the things that's not defined as well in the legislation. So it really does depend on how WaterTAP comes together, but I'm sure they're not going to put that on the agenda.

The Chair (Mr. David Oraziotti): Thank you. That's the time for your response. Ms. Jaczek?

Ms. Helena Jaczek: Thank you for spending quite a bit of time on WaterTAP, with obviously, some advice as to how that organization will look.

I just wanted to go back to the previous presenter, who felt that we had existing institutions and organizations that actually could play the role of WaterTAP, whereas from your presentation, it sounds like you're fairly supportive. Having perhaps heard that presentation—that there were other institutions that could fulfill that role—could you maybe expand a little bit as to what value added there is from WaterTAP, in your view?

Mr. Alex Gill: Sure. One of the reasons we've devoted so much of our attention to WaterTAP is that in the draft legislation, it's deliberately vague. So we know that any concerns we can raise will help shape how it gets formed.

Not to denigrate any of the institutions that are already in existence—MaRS, the Ontario Centres of Excellence

and the regional innovation networks are all doing an excellent job. I think if you look at the financial services side—for example, the collaboration between the Ontario government, the city of Toronto and what's going on around marketing Toronto as a financial services hub—you see a very rough model for what WaterTAP could become. And that was put in place despite the fact that there is a financial services alliance and the insurers have associations—they all do little pieces of the puzzle. But I think having something that's focused and a dedicated partnership organization that helps move everything forward would be in everybody's interest.

Mr. Alex Keen: I think the other thing about WaterTAP that would not be duplicated is the fact that it can work in the marketplace as well as developing companies and technologies, so generating a friendly marketplace and generating people to ask Ontario companies to solve their problems. That's not happening now.

The Chair (Mr. David Oraziotti): Thank you. Ms. Savoline or Mr. Barrett?

Mr. Toby Barrett: Thank you, ONEIA, and thank you for the Deloitte report as well. Yes, we are looking to environment industries to fill some of the gap from the hundreds of thousands of manufacturing jobs that we've lost in the last several years. It's not going to make up for a lot in the steel industry and some of the big ones like that.

In the Deloitte report, we talk about global competition, and we've heard testimony this afternoon as well—GE bought Zenon; I think those membranes come from Hungary now, but I'm not sure—about the impact of the large firms like Veolia with respect to water.

But just going back to the Deloitte report, where you make reference to not only relying on exports, which I think is part of the goal of this legislation, but also protecting the home market—and that sometimes gets into trouble. I know there's a mention here of emphasis on buy Ontario in the public procurement of contracts and local content. I know some of this is federal. There has been a bit of a ruckus. Obama has Buy America; that's been devastating for the steel industry in my area, and, more recently, cucumber growing. I think this buy Ontario—there's been a challenge with respect to either wind or solar. Has ONEIA done any further work on this, how to avoid some of those challenges?

Mr. Alex Gill: That's a very good point. First of all, let me be very clear: We're in no way suggesting that Ontario firms should be sheltered from competition or that they're somehow second-rate and can't compete internationally. We have some of the best firms in the world in this province. The challenge we have is that when a lot of international firms are coming here to sell their technology and their customers say, "Well, where have you installed this?" they will point to large government-funded facilities in Europe or in Asia and say, "We installed rainwater harvesting in Amsterdam city hall. We installed energy efficiency technology in the Berlin arts platz." All of a sudden, that breakthrough has given them an incredible footprint in our market.

What we're looking for the government to do is essentially find a way—and there have to be ways, because every jurisdiction in the world is doing it, and they're not getting challenged under the WTO—to allow Ontario companies to compete for the stuff that already has to be done anyway, and out of that, they'll be able to advance.

The Chair (Mr. David Oraziotti): Thank you. That's time for your presentation. We appreciate the comments. Thanks for coming in today.

ECOJUSTICE CANADA

The Chair (Mr. David Oraziotti): Our next presentation is Ecojustice Canada. Good afternoon, and welcome to the Standing Committee on General Government. You have 10 minutes for your presentation and five for questions. State your name for Hansard, and you can begin your presentation when you're ready.

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Ms. Anastasia Lintner: Thank you very much. I appreciate the opportunity to come before the standing committee and speak to you today about Bill 72. You will have already received a pretty substantial submission written by Ecojustice and the Canadian Environmental Law Association, as well as a very small handout that was just provided on one sheet of paper. My name is Anastasia Lintner. I'm a staff lawyer employed by Ecojustice Canada. I also have a doctorate in natural resource and environmental economics.

The organization I work for, Ecojustice Canada, is a national non-profit organization that uses the law to protect and restore the environment in Canada. Ecojustice has long worked to promote water sustainability within Ontario, and we often partner with the Canadian Environmental Law Association when we are developing submissions on law reform, as we have done in this case.

The Canadian Environmental Law Association and Ecojustice are both members of a recently organized alliance called the Ontario Water Conservation Alliance, which has 47 member organizations who got together and endorsed an original platform associated with our expectations for this piece of legislation. The alliance is a coalition of citizens, organizations and businesses who believe an environmentally sustainable and economically secure province requires a comprehensive strategy for water conservation and green infrastructure.

The alliance has representation from diverse organizations, including parks organizations, environmental accounting and environmental labelling organizations, environmental training and environmental building organizations, municipalities, manufacturers of low-flow appliances, the environmental industry and landscape organizations. You will find in our longer submission, on pages 22 to 23, a comparison of the alliance's platform to Bill 72 as it came before you for discussion.

The Canadian Environmental Law Association and Ecojustice prepared initial comments on Bill 72, pursuant to the notice given by the Ministry of the Environment

under the Environmental Bill of Rights. We consulted broadly within the alliance to inform those submissions, and since then, we have continued to consult with the alliance and further strengthen these recommendations, and these are the ones that we are presenting to the standing committee.

Ecojustice is supportive of Bill 72, and believes there are additional measures that could be included to move Ontario toward a path of water sustainability and economic leadership. I do not want to go through this lengthy submission in great detail, so I will focus on three key aspects:

(1) We encourage you to think outside pipes and taps and enable innovation in the water sustainability sector by taking a holistic approach and emphasizing water conservation and green infrastructure solutions.

(2) We encourage you to create a culture of water conservation in Ontario by enabling a comprehensive public education campaign.

(3) We encourage you to provide capacity for First Nations to invest in and take advantage of water opportunities in Ontario.

With respect to the first aspect, innovation in the water sustainability sector, you have already heard testimony today that relates to the Water Technology Acceleration Project, or WaterTAP, a corporation which will be empowered to develop certification, labelling and verification programs, and, if requested, it would also be able to promote Ontario water innovation internationally. Ecojustice agrees with the need to further build Ontario's water sector and to promote economic opportunities in Ontario.

WaterTAP would help facilitate pilot projects and bring different sectors together to be a commercial vehicle for building Ontario into a world power in water technology and innovation, and we recommend that the vision for our water sector be expanded to include a more holistic approach, to think on a watershed scale, to emphasize water conservation and efficiency and green infrastructure solutions. In order to do that, we have made recommendations in our markup to Bill 72, which would broaden WaterTAP's objects and better reflect these opportunities for advancing conservation approaches by including services and practices as well as technologies.

Also, we recommend that taking an innovative soft path and green infrastructure approach will have opportunities for Ontario's leadership and economic advancement.

Secondly, on water conservation culture, Ecojustice believes that the Ministry of the Environment should lead a public education campaign on conservation, in particular by enabling existing institutions and organizations who can reach the public across Ontario.

We believe that there are great opportunities in linking water and energy solutions together, and that should be further empowered.

We believe the bill, in general, should be strengthened to add tracking, monitoring, reporting and continuous

improvement requirements that allow for advancement in this sector, and also to link to provincial priorities regarding employment training, and have a broad suite of occupations and professions be better enabled for these solutions.

On First Nations, Ecojustice believes that First Nations face unique challenges related to water sustainability. Many of these First Nations are in rural and northern situations where their systems remain at risk. There are many unresolved issues relating to resources, standards and governance. Water treatment solutions for First Nations communities, therefore, must be effective in remote, northern and rural communities as well as in the more urban centres in the south. In many cases, this will require new or expanded research to apply and modify water technologies that were developed for more populated solutions and may require exploring technologies from a point-of-use or small-system perspective rather than large-scale centralized systems approaches.

There are very specific contaminants of concern in individual First Nations communities with respect to their drinking water, and research is needed to obtain solutions that are readily implementable. Such research would also benefit non-First Nations communities with similar challenges to drinking water, such as rural and small communities.

To conclude, the Ontario Legislature has demonstrated leadership in promoting environmental sustainability over many decades. Ecojustice encourages you to seize this opportunity and entrench Ontario as a leader in water sustainability, and to do this by enabling the pursuit of innovation and excellence in developing and commercializing water technologies, services and practices. The testing ground for such research and innovation will benefit Ontarians directly, through local implementation of solutions and promotion of a new economy in water conservation-green infrastructure.

The challenge is to generate these solutions without a widely pervasive water crisis, as is being experienced in other jurisdictions such as Australia. Ecojustice believes that Ontario is up for the challenge and can be ready to resolve water conservation and protection challenges that arise in the future, and not only within Ontario.

Subject to your questions, those are my submissions.

The Chair (Mr. David Orazietti): Thank you very much for your presentation. Ms. Jaczek, you're up.

Ms. Helena Jaczek: Thank you to Ecojustice and the Canadian Environmental Law Association, under the umbrella of the Ontario Water Conservation Alliance. I believe you put out a press release as well today, bringing your general support with your ideas for strengthening forward. I know that your organizations have been very involved and have provided input in our consultations to date. Certainly, we intend that dialogue to continue.

I think a number of the areas that you've touched on in your three broad recommendations will certainly be things that, assuming this bill is passed, we will be getting into at the regulation phase.

I have a background in health promotion. You talk about a public education campaign. Could you give us an

example of a jurisdiction that has provided a successful water conservation education program with some sort of measurable results? It would be really useful to know about something like that.

Ms. Anastasia Lintner: That's a great question. I don't have an example that I can send you a report about. I live in Guelph, and I would commend to you the efforts that the municipality of Guelph goes to, to educate the public about the different programs. I know that for some of their programs, such as the outdoor water use restrictions, not only the name of the program but the different levels are recognizable by a very broad representation of the individual citizens there, given the sorts of investments that they've made in those campaigns. So while I don't have the answer, I suspect that the municipality of Guelph would have lots of information about their success and how they achieved it.

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Ms. Helena Jaczek: Yes, we have heard from the city of Guelph, so it's good to hear from one of the members of the community that it's very well-known. Thank you.

The Chair (Mr. David Oraziotti): Thank you for the question.

Ms. Savoline.

Mrs. Joyce Savoline: Thank you for being here today. My question is with regards to WaterTAP. We talk about it here in terms of a stand-alone corporation for testing, demonstrating and commercializing innovative water technologies, but what decision-making powers do you see this organization having, since it's stand-alone?

Ms. Anastasia Lintner: I would see that the way in which it's governed and how it achieves its outcomes would be completely determined by the objects and the programs, as would be outlined in the legislation. So our recommendations are to make sure that the objects of the corporation would enable opportunities for new solutions that think beyond the current expertise that we have in technologies in Ontario and allow new innovation, new ideas. Smaller and medium-sized enterprises that would be thinking innovatively and thinking about solutions that we might not normally think of in general practice would find that they would fit within those.

Mrs. Joyce Savoline: So this organization would make those decisions?

Ms. Anastasia Lintner: The organization would make the decisions about what projects they would like to see move through—you know, getting the idea through to the commercialization. But it would be limited by and prescribed by the actual objects of the corporation.

The Chair (Mr. David Oraziotti): Thank you. That's time.

Mr. Tabuns, do you have any questions?

Mr. Peter Tabuns: Just very briefly, and thanks for the presentation, Anastasia.

The green infrastructure element that you want to see encouraged in the innovation of the water sustainability act: Could you talk a bit about leafy green infrastructure and its potential for dealing with our water problems?

Ms. Anastasia Lintner: My understanding of the leafy green infrastructure—for green infrastructure, we've provided a definition that would allow for lots of different opportunities that both are about preserving natural systems but are also about emulating natural systems. This term “leafy green infrastructure” is to limit it to the natural infrastructure, such as an urban forest canopy. The ability for an urban forest canopy to both slow down storm water runoff and allow the water to percolate into the groundwater more easily—in addition to the sort of benefits from the perspective of water sustainability, they also provide co-benefits of providing shade and helping with the reduction of the heat island effect in an urban centre. So this ability to think about those solutions as addressing water concerns would also enable us to realize these other benefits from an environmental perspective.

Mr. Peter Tabuns: Okay, thank you.

The Chair (Mr. David Oraziotti): Thank you very much for coming in today, and thank you for your presentation.

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

The Chair (Mr. David Oraziotti): Our next presentation is the Canadian Environmental Law Association. Good afternoon, and welcome to the Standing Committee on General Government. You've got 10 minutes for your presentation and five for questions. State your name for the purposes of Hansard, and you can begin when you're ready.

Mr. Joseph Castrilli: Thank you, Mr. Chairman. Mr. Chairman, members of the standing committee, I'm pleased to appear before you on behalf of the Canadian Environmental Law Association to address Bill 72, the Water Opportunities and Water Conservation Act.

As members of the standing committee may know, the Canadian Environmental Law Association was established in 1970 to use existing laws to protect the environment and, where necessary, to advocate environmental law reforms. We have a long history of involvement in water-related issues generally, including water conservation matters in particular. As members of the standing committee also will be aware, our detailed submissions on Bill 72, which you already have, were drafted jointly with our colleagues at Ecojustice Canada, and have been endorsed by a number of other groups, as Ms. Lintner noted.

In the time allotted to me this afternoon, I want to raise just two points from our joint submission in order to leave time for questions from members of the committee.

First, we want to emphasize in our submission, among other things, the need to require conservation plans, establish standards and support green infrastructure. These matters, in our view, consist of five components.

(1) Permit conditions: One way water conservation can be achieved is to condition the obtaining of permits to take water under provincial law on having a water

conservation plan that includes development of best management practices for water conservation. The authority to tie water-taking permits to water conservation plans for both the public and private sectors was already contained in 2007 amendments that created section 34.1 of the Ontario Water Resources Act. However, as members of the committee are aware, section 34.1 is still not in force. Bill 72 would authorize the province to require municipalities, by regulation, to prepare water conservation plans as part of their water sustainability plans, the latter also required by this bill. The province, in my respectful submission, needs to explain how and when it will integrate the requirements of section 34.1 of the Ontario Water Resources Act with Bill 72 proposals and bring them both into force. In our view, it is past due for water-taking permits to be clearly linked to water conservation as a matter of law, for both the public and private sectors.

(2) Infrastructure grant conditions: With respect to this matter, we recommend that Bill 72 link obtaining infrastructure grants to the submitting of water conservation plans. This authority is not contained in Bill 72, but should be.

(3) Water efficiency standards: We support the implementation of water efficiency standards for various sectors. This does appear to be reflected in Bill 72 in two different respects: firstly, with respect to proposed section 34.12 under the Ontario Water Resources Act, which speaks directly to the question of water efficiency; and secondly, with respect to proposed amendments to the Building Code Act under a proposed section 34(7), which would authorize a review of water conservation standards to commence within six months of the amendments coming into force, and then once every five years thereafter.

(4) Green infrastructure incentives: On this issue, Bill 72 should define conservation and efficiency and green infrastructure as infrastructure, and authorize funding in respect thereto. Again, such authority is not currently contained in Bill 72, but should be.

(5) Land use planning and development: On this matter, Bill 72 should require that land use planning and building decisions incorporate innovative water conservation, green infrastructure and low-impact development approaches. However, apart from the proposed amendments to the Building Code Act that I noted a moment ago, this issue is not otherwise addressed in Bill 72.

From our background submissions and my comments this afternoon, members of the standing committee will see that we view Bill 72 as incomplete with respect to a number of these matters. Our markup of Bill 72, also contained in our full submission, attempts to remedy a number of these issues.

The second main area I wanted to focus on briefly was the question of intra-basin transfers. The provincial government needs to follow through on its commitment to strictly regulate intra-basin transfers of water by promulgating the regulation that has been expected for some

time on this issue under the Ontario Water Resources Act. Our background submission sets out what, in our view, the province should do both within and outside the four corners of Bill 72 on this matter. But in my respectful submission, failure to address this issue will undermine the goals of Bill 72 by encouraging a status-quo approach to water supply management based on building costly big pipe infrastructure that will disrupt watersheds, cause environmental harm and impede progress on achieving water conservation goals.

Subject to any questions members of the committee may have, those are my submissions.

The Chair (Mr. David Oraziotti): Thank you very much for your presentation. Mr. Barrett, you're up first.

Mr. Toby Barrett: I'd like to thank both CELA and Ecojustice, Sierra Legal Defence, for making your EBR submission available. You're the only organization that has, so far, and we were able to get a copy of yours off your website. Being in opposition, we don't get this kind of stuff.

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I might mention too that a very large number of people in my rural riding don't have high-speed Internet. They don't do this kind of stuff, so they probably don't send the stuff in. Secondly, they don't have access to it from the people who do send it in. Do you think there's a problem there? Your organization has been involved in this kind of stuff since 1970. In many ways, it's great to have an Environmental Bill of Rights registry and submissions to go in, but it freezes out an awful lot of people, including myself as an opposition member.

Mr. Joseph Castrilli: Thank you for your question. I think if you were to look, for example, at the provisions under the Environmental Bill of Rights, you would see that methods of engaging public consultation and communicating with the public generally are not limited to the Internet; that's just one of many ways to do so.

In fact, the statute sets out a variety of opportunities and methods that the minister could use in particular circumstances. I agree with you that in more remote and rural areas, there may be a need to be much more hands-on in terms of how information is disseminated.

Mr. Toby Barrett: I know the previous presentation—again, it's heartening, coming from an organization which I assume is involved with lawyers and what have you, that there was an emphasis on public education. As legislators, I feel we have the same problem when you have the power, as a group, to make a law. When you have that hammer, every problem that you see looks like a nail, so the knee-jerk reaction in many cases is to make a law or to make amendments rather than thinking of other approaches like public education, which we heard emphasized in the last presentation.

As far as public education—maybe it's unfair to ask you this question, but it was suggested that WaterTAP do this, it was suggested the Ministry of the Environment do this and it was suggested that other existing organizations and institutions be involved with public education. Is there any thought on where the focus should be? Should

it be coming from the Ministry of the Environment or should it be hived off to some other organization?

The Chair (Mr. David Oraziotti): You get an opportunity for a very brief response. We need to move on.

Mr. Joseph Castrilli: My sense is that public information and public education should come from a variety of sources; the Ministry of the Environment doesn't necessarily have to have a monopoly on that. If it thinks that a delivery of public information is better suited in particular circumstances to a special organization, I'm happy to have that happen, as long as it does happen.

The Chair (Mr. David Oraziotti): Thank you. Mr. Tabuns?

Mr. Peter Tabuns: Thank you very much for the presentation. The infrastructure grant conditions linking the obtaining of infrastructure grants to the submitting of water conservation plans: Is this solely with regard to water systems, or are you talking about using this as a lever for all kinds of infrastructure grants?

Mr. Joseph Castrilli: I think, for the purposes of this bill, it was designed to focus on water and waste water.

Mr. Peter Tabuns: Okay. Do you see any other obvious levers for ensuring that municipalities actually put together and deliver on water conservation plans?

Mr. Joseph Castrilli: I think the financial connection is a mighty powerful way of sending the message that I think, as a matter of government policy, the government would want to send. It's often used in other jurisdictions. I'm thinking, for example, that in the United States, infrastructure money is tied to good conduct with respect to environmental practices, and if there is a failure to engage in good conduct in circumstances where the impact is becoming serious, the financial strings are simply tightened. I think it's a very useful and effective means of reaching a public policy goal.

Mr. Peter Tabuns: Okay. Thank you.

The Chair (Mr. David Oraziotti): Thank you. Ms. Jaczek.

Ms. Helena Jaczek: Thank you very much for your presentation. In particular, I'm glad to see that you like the way we're going in terms of water efficiency standards and the amendments to the Building Code Act. In fact, the proposal is to ensure that water conservation becomes such an important part that even the name of the existing Building Code Energy Advisory Council is proposed to be amended to the Building Code Conservation Council. We're really trying to ensure that culture change at the top.

More specifically, as it relates to WaterTAP, there was, from a previous deputation, the idea that perhaps we have existing agencies that could in fact have the role that we see for WaterTAP. Could you just expand a little bit? You talk about a holistic approach and so on. Do you feel that there is value added from what we are proposing as WaterTAP?

Mr. Joseph Castrilli: I think it makes sense, when the government is trying to project a culture of conservation, to have an agency whose sole or primary responsibility is to deliver on that message, so I don't have any particular

problem with having an agency such as WaterTAP do that in this circumstance.

Ms. Helena Jaczek: Thank you.

The Chair (Mr. David Oraziotti): Thank you very much for coming in today, and thanks for your presentation.

Mr. Joseph Castrilli: Thank you, sir.

WATER ENVIRONMENT ASSOCIATION OF ONTARIO

The Chair (Mr. David Oraziotti): Our next presentation is the Water Environment Association of Ontario. Good afternoon and welcome to the Standing Committee on General Government.

Ms. Catherine Jefferson: Thank you very much, on behalf of the Water Environment Association of Ontario, for letting us speak to you today. You have a brief presentation prepared by us.

Just to give you some background, the Water Environment Association of Ontario represents the waste water sector in Ontario. Our membership includes representatives from municipalities, academia, engineering consulting firms, the industrial sector, the provincial and federal governments, First Nations, equipment suppliers and others. Each has a focus on waste water management, whether as a proponent of public education, as a system designer, construction and operation manager, operator training specialist etc. I won't read the rest of it.

Our members are intimately associated and involved with water, waste water and stormwater management from both urban and rural settings across Ontario. We have members from the largest municipalities to some of the smallest municipalities.

In addition, we're actively involved in design and implementation of new technologies pertaining to systems and individual components. As well, we have the need to find experienced waste water operators for system operations.

We appreciate being included in this consultation process and hope that our comments can shape this as we move along.

Our association's history in Ontario is long; our expertise in this sector, extensive. Our association mandate, vision and goals and those of the Water Technology Acceleration Project are quite remarkably the same.

We support in principle the objectives of part 1, section 1. However, we do have some concerns. The major comments pertain to these concerns, which are:

- the revision of the objects of the Ontario Clean Water Agency;

- the proposal to develop a corporation;

- the emphasis on water conservation, with minimal mention of waste water, stormwater or water reuse, which will obviously assist in that objective;

- the potential funding to support activities like water conservation for smaller municipalities; and

—the lack of reference to enhancing operator training and certification, which would encourage the water and waste water sector in Ontario, Canada and globally.

The use of terms in the proposed bill are not adequately defined as to meaning and implied intent. Terms such as “aspirational targets” are there.

The revision of the objects of the Ontario Clean Water Agency: It’s somewhat confusing as to what the intent is here—if it’s to be in the private sector or act on behalf of the government.

The OCWA may have expertise to lend municipalities. The larger municipalities may find the new objectives of OCWA intrusive.

The proposal to develop a corporation: We support the need for a dedicated and knowledgeable body to undertake the objects as set out in section 5. However, these objects should also include the development of training and certification of water and waste water operators as a key issue. The demographics currently lack sufficient numbers of trained professionals for water and waste water operations. Promoting this sector would also lead to promotion of new technologies through their daily operations.

On the other hand, although we support it, there is a concern that the formation of a corporation might dilute the effectiveness of associations such as ours, which already have well-established objects. There may be more effective ways to achieve the objects through collaboration of the government with these associations.

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Emphasis on water conservation: Throughout the document, we refer to water, but we haven’t defined what we mean by “water.” “Water” should include water harvesting, water reuse etc. There’s some inconsistency in the documents.

One of the roles of the proposed new act should be to educate the public and private sectors on the importance of the hydrologic cycle and human interference, with the subsequent opportunities generated in addressing water conservation, innovation and new technologies. We speak of both hard and soft technologies, training and accreditation being soft.

We applaud the government for moving forward on a verification program for technologies for homeowners, and we encourage the government to work with Ontario associations to communicate new and upcoming information to their members.

Potential funding to support activities like water conservation for smaller municipalities: That is important. Smaller municipalities may not be as advanced in their current plans, and they need the funds to do so.

A major component that’s missing is, as I indicated, the lack of reference to enhancing operator training and certification. That would encourage the water and waste water sector in Ontario, Canada and globally. We have to have a pool of experienced operators.

In summary, the objects of the corporation, as outlined in the explanatory notes, strike a chord with the Water

Environment Association of Ontario as they echo our organization’s goals.

In subsection 12(3), the minister gives the corporation the task of “assisting ministries and crown agencies in organizing conferences and other programs.” We suggest that this notion be re-examined. Within Ontario, there are a number of associations such as ours related to water and waste water. By implying that the government may organize conferences etc. on water and waste water, there could be a weakening of the associations or dilution in the participant pool for such activities. Organizations such as ours are membership-based. We urge the government to work with associations on the organization of conferences and transfer of technologies related to water opportunities. Our associations already have structures in place and mechanisms for transferring information without trying to compete with provincial departments or crown agencies. We believe the development of content and delivery to stakeholders may be best achieved through other than a government agency, i.e., collaboration with professional and technical associations.

That concludes my presentation.

The Chair (Mr. David Oraziotti): Thank you for your presentation. Mr. Tabuns, if you have any questions or comments at this time—

Mr. Peter Tabuns: Are there any amendments that you have drafted that you believe need to be brought forward for this bill?

Ms. Catherine Jefferson: Amendments? We can put something forward. We haven’t at this point in time. We’re a half-a-person organization, if you like.

Mr. Peter Tabuns: Okay. Then I won’t ask you to do that. The concern you had—you had a number of concerns, but one was making sure there wasn’t confusion between WaterTAP and OCWA in terms of their actual roles, and the definition of “water.”

Ms. Catherine Jefferson: Yes.

Mr. Peter Tabuns: Okay. That’s enough for me. Thank you.

The Chair (Mr. David Oraziotti): Thank you. Ms. Jaczek?

Ms. Helena Jaczek: Thank you very much, Ms. Jefferson, for coming and explaining a little bit about your concerns. Certainly around clarification of terminology I think this is something that clearly, going forward, we’re going to have to make sure we spell out very clearly. That point is well taken.

In terms of potential duplication, I think delineation of the exact functions of the organization is perhaps another clarification that’s required. I’m still trying to get used to the number of associations that are involved in water and the environment in Ontario. I guess, just going forward, if you could maybe elaborate a little bit on what your organization could specifically offer Ontarians in terms of developing our knowledge expertise in the water and waste water sectors. What’s your niche?

Ms. Catherine Jefferson: Unlike the Ontario Water Works Association, who deal with drinking water, our association is waste water- and stormwater-related. That

is our focus. Through our organization we try to do technology transfer through seminars, conferences etc.—networks of people we can work with. We're trying to reach out to the smaller municipalities.

The other thing I failed to mention is, there is an Ontario Coalition for Sustainable Infrastructure, which is composed of five associations, ourselves being one of them, which I also think could be useful as we move forward with this. But we are focused on waste water management and biosolids, which is an end product of the waste water process.

Ms. Helena Jacek: Thank you.

The Acting Chair (Mr. Bill Mauro): Mr. Barrett.

Mr. Toby Barrett: I have a question. You focus on sewage treatment and stormwater and infrastructure. I think of Port Dover. They're building a gigantic reservoir to capture stormwater. They never had this system before. It'll be right into Lake Erie. Just on that alone, what is the infrastructure gap? How many communities have sewage treatment plants but don't have it separated out from the water that comes through the sewers from heavy rainfall, for example?

Ms. Catherine Jefferson: I couldn't give you the exact numbers on communities that don't have stormwater management. It's pretty much implicit in building these days in the Planning Act and development, having stormwater facilities on site or through the municipal waste water treatment plants. It was a practice to treat stormwater directly, but that's very expensive because you're treating a lot of water unnecessarily that could go to a holding pond, for instance.

That doesn't really answer your question other than—there are a lot of larger municipalities that have stormwater management. There are wetlands that are being used in some areas as well.

Mr. Toby Barrett: Exactly.

Ms. Catherine Jefferson: And if you have the land for them, that's a good choice too.

Mr. Toby Barrett: This legislation is designed to rectify some of those problems by various means. Do we have any idea—maybe we don't—how much this would cost?

Ms. Catherine Jefferson: I don't believe we do have a cost on that. I know the federal government has just been going through a proposed regulation for waste water. They've been trying to figure out the cost, and it's been tricky across Canada. Each province has trouble figuring it out.

Mr. Toby Barrett: Okay. So the—

The Acting Chair (Mr. Bill Mauro): Our time is up. Thank you very much for your presentation, Ms. Jefferson. I appreciate it.

COUNCIL OF CANADIANS

The Acting Chair (Mr. Bill Mauro): The next one is the Council of Canadians. If I could just ask you to state your name for the purposes of Hansard. You've got 10

minutes for your presentation, and that would leave us five for questions.

Mr. Mark Calzavara: My name is Mark Calzavara. I'm the regional organizer with the Council of Canadians. Thank you very much for allowing me to come and speak to you today.

The Council of Canadians is Canada's largest citizen advocacy organization. We work to protect the public interest by promoting progressive policies on fair trade, clean water, energy, public health care and other issues of social and economic concern to Canadians.

Maintaining public ownership and control of water resources is an important priority for us. A key component of our national water campaign is to advocate for a national water policy that preserves water as a public resource and enshrines water as a human right.

The Council of Canadians understands that the quality and availability of a community's water supply is linked to its future prosperity and health. We have 24,802 members in Ontario and 14 local chapters.

Through our Ontario-Quebec regional office in Toronto, where I work, we have recently been involved in campaigns to protect water resources with communities at site 41, in Millbrook and on the Oak Ridges moraine as well.

Last Thursday, we organized a rally here in front of Queen's Park calling for greater protection of our water. People came from across Ontario from communities that feel under threat from their water because they think this government is not doing enough and they don't see anything in Bill 72 to give them confidence that the government understands the multiple threats to water resources in Ontario.

The little protection provided by our current laws and regulations has already been eclipsed by urban sprawl and industrial growth, and now climate change threatens to drastically reduce the quality and quantity of water available for future generations. We've passed the point where the size of our water resources can protect us from our own irresponsible behaviour.

1700

Bill 72 is being promoted as a solution to water issues in Ontario and as a means for Ontario to profit from the global water crisis. At the same time, however, the government has tabled Bill 68, which will dramatically reduce the ability that communities currently have to discover and to challenge the approvals of activities that will threaten their water supply. The so-called modernization of Bill 68 may well create the need for the new treatment technologies that Bill 72 aims to promote. These bills are a sort of one-two punch that will allow business to profit from abusing our water and to profit again by selling us the technology to clean whatever polluted water remains.

We understand that the Ontario government has not consulted First Nations in the province about Bill 72, which is a situation that must be remedied immediately.

Our specific questions around Bill 72: There's a lack of clarity on technologies being promoted. We would

normally applaud initiatives to improve water conservation but are skeptical when conservation goals are combined within an act that is aimed largely at promoting industry. There seems to be a blurring of the responsibilities between the Ministry of the Environment and the idea that the Ontario government is there to promote industry. The Council of Canadians encourages promoting local industry, but we do not have sufficient information about the technologies being promoted and whether or not they meet the needs of communities in Ontario. The question would be: What are the specific technologies and industries that the bill is going to be promoting, and how will they be selected?

Funding for municipalities: We support conservation goals for municipalities but are generally concerned about standards being imposed on municipalities without clear commitment of additional funding.

We also believe in appropriate and sustainable technologies for municipalities to ensure that the mandate of promoting Ontario green industry does not lead to the promotion of expensive technologies for cash-strapped local governments where cheaper and simpler solutions may exist. Does the government plan to offer any new funding for municipalities to meet new conservation and sanitation standards and to upgrade existing infrastructure?

The competition from foreign corporations: It is not clear how this act will be used to promote local green jobs in the face of competition in the area of clean water technologies from foreign corporations. The Council of Canadians is concerned that the North American free trade agreement and future trade agreements, including CETA, will prevent the Ontario government from limiting funding to local industry. How will the act foster a local water and green tech industry in Ontario? And will funding be directed to local green jobs in Ontario?

Lastly, the industrial water aspect: There seems to be a real emphasis in the bill, so far, on consumers, on getting the best technology into the homes of consumers, which is great. That's going to save water usage but, really, consumers are only about 5% to 10% of the total usage of water in the province. So how does the act propose to deal with industrial water use and contamination, which is a much greater aspect of water use?

That concludes my presentation.

The Acting Chair (Mr. Bill Mauro): Thank you very much. We have about 10 minutes for questions, so about three minutes a side. We'll start with the government side. Ms. Jaczek.

Ms. Helena Jaczek: Thank you, Mr. Calzavara, for attending today. We didn't receive any handout. If there is something available, I'm sure all sides would appreciate that. I was wondering: Did you make any comments on the EBR, actually?

Mr. Mark Calzavara: No, we did not.

Ms. Helena Jaczek: Okay. So having something in front of us would perhaps be very useful.

I'm not sure if you were here, but I certainly did have the opportunity, when some of the previous deputants made their presentations, to assure them that it's our

government's intention to maintain public ownership of our water systems. There's nothing in this act that would in any way change that direction.

Given the fact that the Council of Canadians is a well-known advocacy organization, perhaps I'll pose you a question I asked another deputant: Are you aware of any what we might call excellent or best practices in the shape of some sort of public education program that promotes water conservation, something that has shown some measurable results? Would you have some examples of those for us?

Mr. Mark Calzavara: Not off the top of my head, no. I think that's fairly easy to acquire information about. There are a number of different jurisdictions that have tried similar programs. Generally it's very cost-effective to convince people to use less water, but it's not necessarily the first step; it's not necessarily the low-hanging fruit.

Ms. Helena Jaczek: So what would you see as the low-hanging fruit?

Mr. Mark Calzavara: It's infrastructure, the leaks: You have to plug the leaks first. If you can plug the leaks first, as far as water consumption and the wastage of water, that's where you get the most bang for your buck. Instead of spending millions of dollars potentially on advertising campaigns over the next year to convince consumers to replace their toilets or to buy into a new program of rating the water use and conservation potential of various different household items, that money will go a lot farther if you put it in the hands of municipalities and let them fix their leaks.

Ms. Helena Jaczek: I think that is precisely what our municipal sustainability plans are all about. Thank you very much.

The Acting Chair (Mr. Bill Mauro): To the official opposition: Mr. Barrett.

Mr. Toby Barrett: The council is certainly well known for your work with respect to the bulk export of water. Where do we stand on that, nationally and with respect to Ontario?

Mr. Mark Calzavara: In Ontario, currently the government is assuring us that there will be no bulk export of water. Opinions change over time, and as the world water crisis gets worse and worse and worse, the challenge to maintain that policy of no bulk water exports is going to be more and more difficult. The value of water will continue to go up and the desire of people to buy it off of us will continue to go up. We have to take a longer-range look at the entire situation, look what our own needs are and get it into our personal ethics now that bulk water export, shipping water out of its natural basin, is a bad idea. The federal government has recently introduced rules that were not as clear as they could have been, so we're moving on the federal level to try and reduce the amount of water that's allowed to be exported as bulk water exports.

Mr. Toby Barrett: But there are no bulk exports of water occurring.

Mr. Mark Calzavara: I think the limit is 15-litre containers. If it's in a container smaller than 15 litres,

then it's not required to be reported, from what I understand.

Mr. Toby Barrett: So even these directives—I guess in Ontario it's still under the permit-to-take-water system. I know that the previous government, for example, prevented the export of water from Lake Superior by not issuing a permit to take water, but there is still no ironclad guarantee. I suppose this could be subject to a trade challenge. Is that a real concern?

Mr. Mark Calzavara: Water was not excluded from NAFTA, unfortunately. It's one of the things that many groups, including the council, fought very hard to have excluded from NAFTA, and it wasn't. Now with the comprehensive economic trade agreement with Europe, anything that we give to the Europeans also, because of most-favoured-nation status with the United States and Mexico through NAFTA, we have to give the same deal to them. The secret deals that they're negotiating now around all of our trade and procurement with Europe will be rolled back into NAFTA as well. There's no restriction under NAFTA for water exports.

Mr. Toby Barrett: Thank you.

The Acting Chair (Mr. Bill Mauro): Mr. Tabuns.

Mr. Peter Tabuns: Mark, thanks for the presentation. Are there two or three changes to this bill that you think are really important to see happen?

Mr. Mark Calzavara: I think, first and foremost, the clarity: There needs to be more clarity in the bill. It's very, very vague on details, so: putting some clarity as to where the money is really going to be spent and who is going to be getting the money to achieve these goals.

I think that putting the emphasis on the consumer is actually a mistake in the short term. You have to have a consumer component of it, but making that the strongest public side of the bill is a mistake. Having this come out of the Ministry of the Environment as a Ministry of the Environment affair does confuse things. The ministry should be, first and foremost, worried about protecting our source water.

1710

If an amendment to the bill could be made to make the protection of source water stronger, that would be a wonderful thing. I don't think this bill is the right vehicle for that at this point, but that's what the people in Ontario want. The people who came here on Thursday from all over southern Ontario to protest about the fact that their water wasn't being protected: That's what they want. They want strong source water protection, not source water protection that relies on the whim of certain elements as to whether or not they're going to actually enforce the rules.

The Acting Chair (Mr. Bill Mauro): Thank you very much for your presentation.

DON WATERSHED REGENERATION COUNCIL

The Acting Chair (Mr. Bill Mauro): Next up is the Don Watershed Regeneration Council. I'd just ask you to

state your name for the purposes of Hansard. You have 10 minutes for your presentation, and that will leave us five for questions.

Ms. Celeste Longhurst: My name is Celeste Longhurst, and I'm here today to address you all on behalf of the Don Watershed Regeneration Council.

The Don Watershed Regeneration Council is a formal, community-based committee established by the Toronto and Region Conservation Authority in 1994 to help restore the Don River watershed to a healthy, sustainable natural environment. The DWRC reports to the authority on a regular basis and is composed of community members, elected officials and representatives from businesses, agencies, environmental groups and academic institutions located within or concerned about the future of the Don River watershed.

A new, updated regeneration plan, *Beyond Forty Steps*, was endorsed by the DWRC and approved by the TRCA in 2009. It guides the DWRC in commenting to other government agencies—federal, provincial and municipal—on matters pertaining to the future of the watershed. The new plan addresses the broad watershed issues of sustainability, including water and energy efficiency, and emerging challenges such as climate change.

I'm here today in order to provide the DWRC's feedback on the proposed Water Opportunities and Water Conservation Act.

The DWRC supports the proposed Water Opportunities and Water Conservation Act. We are encouraged to see the provincial government take a leadership role in creating proposed legislation that will protect Ontario's water resources and foster sustainable technologies and innovation. However, the DWRC believes that there are certain components of the act that need to be better defined and strengthened. Specifically, we would like to see the act strengthened to recognize:

- the need for comprehensive and coordinated watershed management as a framework for understanding water supply, use and conservation;

- the importance of assessing surface and ground-water quality and quantity and creating a remediation strategy to address contamination and unsustainable use;

- the invaluable functions of natural systems and other green infrastructure, such as open spaces, green roofs and an urban tree canopy, in sustaining water resources by reducing runoff and associated erosion, flooding and water quality impacts;

- a shift in the water management paradigm to encourage emphasis on management at source and in conveyance before end-of-pipe solutions are developed;

- the contribution of low-impact development to sustainable water cycles;

- the importance of water management as an integrated science which treats water primarily as a resource and not a waste and recognizes the benefits to taking a whole-system management approach that includes stormwater, potable water and waste water;

- the need for a stormwater fee as one of the financial tools to achieve conservation objectives;

—the need for recognizing water as a fundamental human right and public resource, and therefore the importance of establishing limits to privatization of water resources, and that if privatization is to be considered for any water resource, the extent of privatization should be a public-private partnership;

—the need for the Water Technology Acceleration Project to include public stakeholders and have full transparency and accountability in their guiding principles and actions; and finally,

—that any municipal water strategies that are developed should be done so in collaboration with watershed management plans that are put out by Conservation Ontario and its chapters.

Furthermore, the Don Watershed Regeneration Council notes that the act has not yet addressed certain aspects of water management that we feel are vital to creating a sustainable water framework for the province of Ontario. Specifically, we would like to see the act recognize:

—partnerships with neighbouring provinces and territories to address transboundary watershed concerns;

—increased collaboration between the province of Ontario and the federal government to strengthen a national strategy for sustainable water resource management;

—the need for a public education and engagement strategy that will allow the public to become actively involved in water issues and sustainable management;

—the intrinsic value of Ontario's water resources and the need to protect and conserve not only watersheds for their intrinsic value, but the land ecosystems that support these watersheds;

—the issue of unsustainable water usage within industries and the need to address embedded water within goods and services that are produced in Ontario and consumed here or exported; and

—the impacts of climate change on Ontario's water resources and the establishment of a strategy that will help mitigate these impacts.

Finally, while this act may not be the appropriate instrument, the Don Watershed Regeneration Council believes that water issues affecting the health and vitality of First Nations must be a priority for all, and requests continued and sustaining efforts to address these issues with First Nations peoples.

We conclude that the proposed Water Opportunities and Water Conservation Act could be further strengthened by considering the inclusion of the above recommendations from the DWRC into the Water Opportunities and Water Conservation Act. We believe that the proposed act has the potential to help the Don Watershed Regeneration Council with its goals by providing stronger tools for communities to achieve healthier, more sustainable watersheds.

Thank you for taking the time to listen to me today. I hope that the Don Watershed Regeneration Council's feedback on the Water Opportunities and Water Conservation Act will prove useful in the revision and enactment of the act.

The Chair (Mr. David Oraziotti): Thank you very much for your presentation. Mr. Barrett, do you have any questions or comments?

Mr. Toby Barrett: With respect to the Don River and the Don watershed, what would be the human population of the watershed?

Ms. Celeste Longhurst: Huge. I would say the majority of the city of Toronto.

Mr. Toby Barrett: You stress the importance of assessing surface and groundwater quality. What is the state of the Don River as far as water quality, fish populations, things like that?

Ms. Celeste Longhurst: It's come a long way, but it still has a long way to go. There has been a huge effort to remediate the Don, and we've seen a lot of remediation successfully completed, but there's still a lot of work that needs to be done.

One of the biggest issues in terms of water quality is stormwater management and combined sewer overflow. Until we fix that problem, no matter what we do to remediate the quality of the water, every time there's a large amount of rainfall, the combined sewer overflow will destroy any attempts to remediate water quality.

Mr. Toby Barrett: So even the city of Toronto doesn't really have adequate stormwater containment structures?

Ms. Celeste Longhurst: It's an aging infrastructure, and with growing population and growing demands on the city and the infrastructure, there's a huge need for it to be replaced.

Mr. Toby Barrett: Thank you.

Mrs. Joyce Savoline: You mentioned the need for a stormwater fee. Who pays that fee?

Ms. Celeste Longhurst: The users of the stormwater system.

Mrs. Joyce Savoline: Which is who? Homeowners?

Ms. Celeste Longhurst: Yes, homeowners, businesses.

The Chair (Mr. David Oraziotti): Mr. Tabuns, do you have any questions or comments?

Mr. Peter Tabuns: Thanks very much for the presentation. Could you speak briefly to the ability of a complete tree canopy to deal with the stormwater problem?

Ms. Celeste Longhurst: I think that a tree canopy does contribute toward remediation of stormwater issues. However, there are a lot of different things that feed into that. Until we reduce the amount of asphalt in the city—an urban canopy will help in terms of absorbing some of the stormwater. However, when we have a completely impermeable surface paving the entire city, or the majority of it, we need to try and change that, and that will also have a large impact in terms of the amount of stormwater that reaches the drains.

Mr. Peter Tabuns: Okay. Thank you.

The Chair (Mr. David Oraziotti): Thank you. Ms. Jaczek.

Ms. Helena Jaczek: Thank you very much, Ms. Longhurst, and to the Don Watershed Regeneration Council. I was particularly impressed that your sub-

mission is dated July 16, so obviously we're right on top of this.

I think it's worth pointing out that the proposed act is an enabling piece of legislation. I think many of your concerns are things that will be addressed as we go forward, as we look to the regulations. Hopefully, you and your organization will continue to play this enthusiastic part in the consultations over the regulations.

Actually my question was somewhat along the lines of Mr. Tabuns's in that we heard earlier about green infrastructure, and clearly that's something which your organization would have considerable expertise in. Could you maybe, in your experience, tell us a little bit about what some of the best approaches are for the increased use of green infrastructure, especially in an urbanized setting?

Ms. Celeste Longhurst: Absolutely. I think there are quite a few opportunities to take advantage of that. People have been starting to do green roofs and urban

agriculture and increasing urban forest canopy, so I think there are many different ways that we can take advantage of green infrastructure. It goes beyond having green roofs and urban trees and urban agriculture; it goes into green buildings and sustainable building design. I think that an integrated approach needs to be used when taking things like this into consideration and looking at how things work together as systems. I don't think that it's one particular aspect; I think we need to take a sustainable approach to the way our cities are designed, built and run.

Ms. Helena Jaczek: Thank you very much.

The Chair (Mr. David Oraziotti): Thank you very much for your presentation. That concludes our time.

Thank you, folks. That's all of the presentations that we have today. As you know, the amendment deadline is this Friday at noon at the clerk's office. We'll meet next Monday for clause-by-clause.

The committee is adjourned.

The committee adjourned at 1720.

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Deuxième session, 39^e législature

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Monday 25 October 2010

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Lundi 25 octobre 2010

Standing Committee on General Government

Water Opportunities and Water
Conservation Act, 2010

Comité permanent des affaires gouvernementales

Loi de 2010 sur le développement
des technologies de l'eau
et la conservation de l'eau



Chair: David Oraziotti
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENT

Monday 25 October 2010

*The committee met at 1410 in room 228.*WATER OPPORTUNITIES AND WATER
CONSERVATION ACT, 2010LOI DE 2010 SUR LE DÉVELOPPEMENT
DES TECHNOLOGIES DE L'EAU
ET LA CONSERVATION DE L'EAU

Consideration of Bill 72, An Act to enact the Water Opportunities Act, 2010 and to amend other Acts in respect of water conservation and other matters / Projet de loi 72, Loi édictant la Loi de 2010 sur le développement des technologies de l'eau et modifiant d'autres lois en ce qui concerne la conservation de l'eau et d'autres questions.

The Chair (Mr. David Oraziotti): Good afternoon, everyone. Welcome to the Standing Committee on General Government. We're going to continue with the clause-by-clause portion of Bill 72, An Act to enact the Water Opportunities Act, 2010 and to amend other Acts in respect of water conservation and other matters.

Before we proceed, are there any comments or questions? Mr. Barrett.

Mr. Toby Barrett: Thank you, Chair, for the request for comments. I do wish to make a motion right at the outset, and I communicated this to the clerk, as you may know, ahead of time.

I move that the Standing Committee on General Government's deliberations on Bill 72, Water Opportunities and Water Conservation Act, 2010, be deferred until such time as elected municipal councils are in place and a mechanism for their input to committee deliberations is agreed upon.

The Chair (Mr. David Oraziotti): Mr. Barrett has moved this motion, which I understand from the clerk is in order, prior to us discussing the motions that have been put forward by all parties.

Mr. Barrett, do you want to speak to this motion?

Mr. Toby Barrett: Yes, just by way of explanation to members of the committee, as you will know, our deliberations, our hearings, as a committee with respect to the Water Opportunities Act had been held during the time period of Ontario's municipal elections. We know that this legislation impacts directly on, obviously, water service providers. By and large, that does include municipalities.

The Chair (Mr. David Oraziotti): Ms. Jaczek.

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Lundi 25 octobre 2010

Ms. Helena Jaczek: Thank you, Mr. Chair. We will not be voting in favour of the motion as introduced by the Progressive Conservative Party.

Certainly, there has been tremendous consultation with municipalities, not only since introduction of this bill but prior to.

Specifically, AMO has written to us. We know, in their response to Bill 72, that they support the policy direction of the government on municipal water, waste water and stormwater facilities, as taken in Bill 72.

We've had comments from some 13 municipalities on the Environmental Bill of Rights. There were meetings with other municipalities throughout the summer. We feel that the process has certainly looked at their concerns.

Also, the AMO MOU table: This was discussed at AMO's AGM. There were a number of presentations on the proposed act.

In summary, we will not be supporting this motion.

The Chair (Mr. David Oraziotti): Any further comments? Mr. Clark.

Mr. Steve Clark: It's almost like we're going to get a reputation that we don't want to consult with people.

I can appreciate what the parliamentary assistant has said. I brought up the same point last week in the House. I know that it was mentioned, I believe, by Mr. Mauro at the time, the memorandum of understanding, and I read with interest the AMO brief.

However, I spent a lot of time this weekend attending events in my riding. I had occasion, obviously, because there's a municipal election today, to see a lot of candidates and a lot of existing incumbents—incumbents who are very active in AMO and some of the other conferences. I was shocked at how most of them, if not all of them, had little or no idea about Bill 72.

I certainly concur with Mr. Barrett's motion and I hope that the government will reconsider their position.

The Chair (Mr. David Oraziotti): Any further comment? Mr. Levac, go ahead.

Mr. Dave Levac: Not to belabour, but to support the parliamentary assistant, and also take under advisement Mr. Clark's observation of the communication process between AMO and its members—I appreciate that very deeply. Quite frankly, I would actually think that that might be a point to be made.

Interjection.

Mr. Dave Levac: I thought heckling was just for the House. Is heckling just for the House, Mr. Chairman?

The Chair (Mr. David Orazietti): Mr. Clark, we appreciate your comments. You've had your opportunity to speak. Mr. Levac's got the mike.

Mr. Dave Levac: Thank you very much, Mr. Chairman.

Having said that, the parliamentary assistant was absolutely correct, and my understanding is that there was even feedback from non-AMO members, of which there are a few.

Quite frankly, I look forward to moving through the agenda today. I will not be supporting this motion.

The Chair (Mr. David Orazietti): Any further comment?

Mr. Toby Barrett: Again, I recognize that 13 municipalities did send in comments, but I'm not sure when those comments were forwarded.

You did mention the input you received last summer. But we are towards the end of October, and I've attended probably seven or eight all-candidates' nights down in my area. As we all know, municipal councillors are pre-occupied right now.

I just feel that, as we continue with our deliberations, with discussing amendments, the input we received from other organizations—in fact, during the hearings, we did not receive any input from municipalities; it was from other organizations. I don't know whether the government has had the ability to pass that information back to the municipalities and whether municipal councillors have had the time to digest that over the past week, because they are very busy with other things.

For that reason, I just feel that they have a very limited ability to provide input to our committee deliberations. For example, as we discuss amendments to the bill, today is election day; they have other things on their mind. I just don't see how they can be involved or adequately participate in this process.

The Chair (Mr. David Orazietti): Seeing no further comment, I'll put the motion. All those in favour of the motion?

Mr. Toby Barrett: Recorded vote.

The Chair (Mr. David Orazietti): A recorded vote has been called for.

Ayes

Barrett, Clark.

Nays

Jaczek, Kular, Levac, Mangat, McNeely, Tabuns.

The Chair (Mr. David Orazietti): The motion is lost.

We're going to move on to the package you have in front of you. There is a total of 77 amendments. We're going to move to schedule 1. We'll come back to the first three sections following the schedules.

We'll ask for the first motion, a government motion, to be read into the record. Ms. Jaczek, go ahead.

Ms. Helena Jaczek: I move that clause 1(a) of the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be amended by striking out "technologies and services" and substituting "technologies, services and practices."

The Chair (Mr. David Orazietti): Any further comment?

Ms. Helena Jaczek: The reason that we have added "practices" to this particular clause is that it was something that was requested by a number of stakeholders, including Ecojustice and the Canadian Environmental Law Association.

We're looking at a broad range of activities. Specifically, we want to ensure that we foster innovative practices with respect to water, waste water and stormwater in the public and private sectors, not just innovative technologies and services. This is where we would include practices such as stormwater harvesting and water re-use and practices that promote the use of leafy green infrastructure as a means to better protect and conserve water resources.

As we go through some of our motions, you'll note that we've included "practices" in a number of subsequent motions.

The Chair (Mr. David Orazietti): Further debate? Further comment? All those in favour? Opposed? The motion is carried.

Conservative motion number 2: Mr. Barrett.

Mr. Toby Barrett: I move that section 1 of the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be amended by striking out "and" at the end of clause (b), by adding "and" at the end of clause (c) and by adding the following clause:

"(d) to recognize watersheds as the fundamental water management unit and to recognize the importance of integrated watershed management."

The Chair (Mr. David Orazietti): Further comment, Mr. Barrett, on the motion?

Mr. Toby Barrett: As we heard during hearings, this concept was presented to this committee by Conservation Ontario, advising us on the importance of thinking in terms of watersheds, as the conservation authorities do throughout the province.

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To recognize the need to manage water on a watershed basis, they use the term "integrated watershed management" and recommend that it be incorporated into this legislation to allow the province to ensure sustainable water resources, not only with respect to the consumption of water by human beings but to take into consideration an ecosystem approach and also an economic approach.

The Chair (Mr. David Orazietti): Further comment? Ms. Jaczek.

Ms. Helena Jaczek: In listening to our stakeholders, in fact, in municipalities in particular, they've expressed concern about any potential duplication of effort between the requirements of this act and any other legislation and

regulations. Broadening the purpose of the proposed act to include integrated watershed management may overlap and duplicate other legislation—for example, the Clean Water Act, where source protection plans, which include an assessment of drinking water risks, are considered on a watershed basis.

The act is essentially enabling. At the time of developing regulations, it may be appropriate to require or encourage that some elements be implemented on a watershed basis so that certain targets, performance measures, could be established on a watershed basis and there could be coordination across a region or a watershed.

We're not precluding that kind of effort, where municipalities would carry out their planning efforts with other municipal partners within their watersheds. They could certainly submit some joint plans. But we don't feel that we should be introducing this type of amendment.

The Chair (Mr. David Oraziotti): Any further comment?

A Conservative motion is on the floor. All those in favour? All those opposed? The motion is lost.

Our third motion is an NDP motion. Mr. Tabuns, go ahead.

Mr. Peter Tabuns: I move that section 1 of the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be amended by striking out “and” at the end of clause (b) and by adding the following clause:

“(d) to ensure the public ownership and delivery of drinking water and wastewater systems; and”

If I may just speak briefly, Chair. I've had an opportunity to talk with the parliamentary assistant. I understand that the government's interpretation of this bill is that it does not do anything that will increase the risk of privatization, nor does it facilitate the privatization of water delivery infrastructure or practices—activities.

My guess is that the government will vote against this because it feels that it already has a resolution that addresses that, rather than that the government supports privatization.

It would be useful to have the government say that in fact, if it doesn't support this resolution, it's not because it supports privatization.

I believe that it is useful in this case to have a belt-and-suspenders approach, as some of my lawyer friends have said. There will be huge pressure to privatize public infrastructure. Multiple mentions of this in the bill is to the government's and Ontario's advantage. That's my argument.

The Chair (Mr. David Oraziotti): Ms. Jaczek.

Ms. Helena Jaczek: Yes, we certainly have had conversations on this particular subject, because during the hearings we did hear from OPSEU and CUPE that there was a fear around privatization. We will reiterate that there are no provisions in the proposed act that remotely deal with privatization, but because of those concerns we will see in government motion 5 wording

that we feel will allay the fears around that. We feel that our wording is actually clearer, with the same intent.

The Chair (Mr. David Oraziotti): Mr. Barrett.

Mr. Toby Barrett: I think I mentioned during the hearings as well that the government does not provide water for probably 50% of the people that I represent. God does, I suppose, primarily through rain and groundwater. Government does not provide a system.

I think our farms, on my mother's side of the family, have been there for 200 years. We're on our own. We'll probably be on our own for the next 200 years as well. Nobody's going to run a pipeline out that far.

On occasion, people have to purchase water. It's not a government truck that shows up. You're on your own. You buy your own water. You foot the bill for a cistern, for example, to store water. You also foot the bill yourself—there's no government grant or anything—to build a septic system as well. There is no public ownership, and I doubt there will be public ownership either. So I just wanted to raise that for people like myself who live out in the sticks.

The Chair (Mr. David Oraziotti): Thank you. Further comment?

NDP motion, all those in favour? Those opposed? The motion's lost.

Motion number 4: Mr. Tabuns.

Mr. Peter Tabuns: I move that section 1 of the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be amended by adding the following clause:

“(e) to recognize the human right to safe and clean drinking water and sanitation as proclaimed by the United Nations General Assembly.”

Chair, very simply: There's an opportunity, as we adopt a water bill, to take on board the obligation to provide safe and clean drinking water, an issue that unfortunately is a very sharp one in many First Nations communities in this province. I suspect that everyone around the table is familiar with this concept and understands what's at stake. I would urge the government to support this amendment.

The Chair (Mr. David Oraziotti): Thank you. Ms. Jaczek?

Ms. Helena Jaczek: Certainly, we would acknowledge the noble sentiment in the motion and certainly want to ensure that everyone understands that our government continues to strive for all Ontarians to have access to safe, clean drinking water and sanitation services. However, the suggested amendment is beyond the scope of the act. Other acts govern the operation of drinking water systems and sewage systems, such as the Safe Drinking Water Act, 2002, the Ontario Water Resources Act, the building code, 1992, and the Health Protection and Promotion Act.

We feel we have the appropriate legislation to ensure that Ontarians are provided with safe and clean drinking water and appropriate sanitation systems. We don't feel the addition of this motion will assist us in any particular way.

The Chair (Mr. David Oraziotti): Further comment?

All in favour of NDP motion number 4? All those opposed? The motion is lost.

Number 5: government motion, Ms. Jaczek.

Ms. Helena Jaczek: I move that section 1 of the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be amended by adding the following subsection:

“Same

“(2) For greater certainty, the purposes of this act do not include the privatization of publicly owned water, wastewater and stormwater services.”

By way of explanation, this is in response to those fears that we did hear from stakeholders about some intent to privatize. We feel that it was certainly important to add this into the act to ensure that there is clarity. It's a simple statement, but I think it captures our intent very clearly.

The Chair (Mr. David Oraziotti): Any further comments?

Mr. Peter Tabuns: Yes. I just want to go back to put on the record that I understand, in this resolution, you to mean “services” in the broadest sense of the word: as both infrastructure and activities for delivery of water. I would appreciate it if the parliamentary assistant could confirm that.

The Chair (Mr. David Oraziotti): Ms. Jaczek?

Ms. Helena Jaczek: Certainly, we're saying the intent is not to privatize in any fashion. We do know that certain water systems are operated by private companies to date. Certain municipalities have taken that route, as they have every authority to do under the Municipal Act.
1430

Mr. Peter Tabuns: So you see the word “services” understood very broadly. Is that correct?

Ms. Helena Jaczek: I see the word “services” to mean the privatization of publicly owned services.

Mr. Peter Tabuns: Owned, and the operations—because you can own a water system and have privatized the actual operation or delivery of it. This bill is not meant to facilitate that.

Ms. Helena Jaczek: This bill is not meant to facilitate in any way. However, the Municipal Act does allow municipalities to have that particular power.

Mr. Peter Tabuns: I understand that. I just wanted to note before we go to the vote that I'd like it recorded.

The Chair (Mr. David Oraziotti): Okay. Any further comment on the government motion? A recorded vote has been called for.

Ayes

Jaczek, Kular, Levac, Mangat, McNeely, Tabuns.

The Chair (Mr. David Oraziotti): Seeing none opposed, the motion is carried.

That completes the schedule 1 amendments.

Shall section 1, as amended, carry? Opposed? Schedule 1, section 1, as amended, is carried.

NDP motion number 6: Go ahead, Mr. Tabuns.

Mr. Peter Tabuns: I move that subsection 2(1) of the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be amended by striking out “may, to further the purposes of this act, establish aspirational targets” and substituting “shall, to further the purposes of this act, establish provincial targets”.

Very simply, I believe that the term “aspirational” is too vague, that in fact if we're going to set targets, they should be substantial.

The Chair (Mr. David Oraziotti): Further comment?

Ms. Helena Jaczek: We feel that this amendment is actually limiting in terms of the government's flexibility to develop ambitious yet achievable targets for municipalities.

We feel that the targets should be developed in consultation with municipalities and other stakeholders so that in fact they are ambitious but realistic. Again, inserting the word “provincial” would be very limiting. We feel that some targets may not be province-wide. We do need to have that consultation, as I've already said.

The government certainly intends that once these targets are set, they will be ambitious benchmarks that certainly will encourage behaviour change.

We will not be supporting this motion.

The Chair (Mr. David Oraziotti): Any further comment?

All those in favour of NDP motion number 6? All those opposed? The motion is lost.

That takes care of schedule 1, section 2.

Shall schedule 1, section 2, carry? Carried.

NDP motion number 7: Go ahead, Mr. Tabuns.

Mr. Peter Tabuns: I move that the Water Opportunities Act, 2010, be amended by adding the following part:

“Part I.1, Definitions,

“Definitions

“2.1 In this act,

“‘green infrastructure’ means ecological processes or structures, whether natural or engineered,

“(a) that process, capture or direct water, stormwater or wastewater in a manner that emulates natural systems and has multiple ancillary societal benefits;

“(b) that function on a site specific scale or on a regional scale; and

“(c) that include urban forests, natural areas, greenways, streams, riparian zones, meadows, agricultural lands, green roofs and walls, parks, gardens, landscaped areas, green open spaces, bioswales, engineered wetlands, stormwater ponds, soil and technologies such as porous paving, rain barrels, cisterns and structural soils;

“‘soft path approach to water use’ means examining service needs and determining whether water is necessary for service delivery and if it is necessary determining what quality of water is needed, with the overall aim of ensuring current and future water needs do not overstrain or degrade the quality of water flows, systems or overburden infrastructure;

“technologies, services and practices’ includes stormwater and wastewater technologies, services and practices, particularly those technologies and services that,

“(a) take a soft path approach to water use; and

“(b) focus on water services for ecosystem and human needs, low impact development ideas, innovative water practices and promotion of green infrastructure.”

I think the motion speaks for itself. It provides a clearer picture to those who deal with this legislation of how broadly we want to see the idea of green infrastructure.

The Chair (Mr. David Oraziotti): Okay, thank you. Ms. Jaczek?

Ms. Helena Jaczek: Certainly, we understand the intent of this motion. We certainly feel that these are the sorts of practices that will be extremely beneficial for municipalities to consider as they do develop their sustainability plans. However, we feel that being very specific like this within the definitions is unnecessary and potentially even somewhat limiting.

We would also like to emphasize that we do intend for stormwater to be obviously a specific area of examination for municipalities. Certainly within section 3, there is a definition, as it relates to WaterTAP, of waste water that definitely includes stormwater. We would not want anyone to be concerned that we are not looking at stormwater technologies as well.

In summary, we feel that, at this point, we might even be limiting innovation if we’re so specific as including this as a definition.

The Chair (Mr. David Oraziotti): Thank you.

NDP motion number 7: All those in favour? Opposed? Okay, the motion is lost.

Schedule 1, section 3: There are no amendments. Shall it carry? Carried.

Conservative motion number 8: It’s a notice. Do you want to speak to that—

Mr. Toby Barrett: PC?

The Chair (Mr. David Oraziotti): Yes. Mr. Barrett, go ahead.

Mr. Toby Barrett: Committee, you’ll see before you a notice with respect to section 4 of schedule 1, the Water Opportunities Act, 2010.

The Progressive Conservative Party recommends voting against section 4 of the Water Opportunities Act, 2010, as set out in schedule 1 to the bill.

Just by way of explanation, there is a reason for a notice rather than a motion. If the committee were amenable to this and wishes to remove an entire section from the bill, the rules of parliamentary procedure require that the committee vote against the section, rather than pass a motion to delete it.

For that reason, this was not put forward as a motion. In essence, this calls for a submission questioning the need for a completely separate, new corporation to promote and develop the province’s clean water sector. We have OCWA. We have the MRI, the Ministry of Research and Innovation. We have the Ministry of the Environment, where responsibility lies for this function.

I know that during the public hearings, the Ontario Sewer and Watermain Construction Association presented to this committee and advised us, as I recall their words, “Do not waste your time or money on developing a completely new organization to accomplish these kinds of goals. You already have the Ministry of the Environment and other bodies.”

The Chair (Mr. David Oraziotti): Ms. Jaczek?

Ms. Helena Jaczek: We will be voting against the notice. We have heard from innovators and many stakeholders that actually felt quite strongly that there was a need for a dedicated entity that would bring key partners together. In particular, those entrepreneurs with new ideas have occasionally found it difficult to connect to the capital they need.

We feel that this is an excellent idea. It is supported, as I say, by many of those in the business community. Therefore, we will not support this notice.

The Chair (Mr. David Oraziotti): Any further comments? Just for clarification, we are not voting on the notice; we are voting on whether or not schedule 1, section 4, will carry.

So schedule 1, section 4: All those in favour? Opposed? Okay, section 4 has passed.

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Schedule 1, section 5, government motion number 9: Ms. Jaczek.

Ms. Helena Jaczek: I move that subclause 5(b)(i) of the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be amended by striking out “technologies” and substituting “technologies and services.”

The Chair (Mr. David Oraziotti): Comment?

Ms. Helena Jaczek: This amendment expands the objects of the Water Technology Acceleration Project corporation to include assisting Ontario’s water and waste water sectors by increasing their capacity to develop tests, demonstrate and commercialize innovative technologies and services for the treatment and management of water and waste water. This is so that we don’t just focus on the development of innovative technologies but also the provision of innovative services that support the delivery of these services.

This, we feel, is a very important service dimension that is required as part of the work that WaterTAP will do. It was specifically requested by the city of Toronto and Conservation Ontario. The Ontario Environment Industry Association did note during their presentation to this committee that we, in fact, recognize the importance of services in the environmental sector; things like engineering design services as an example. It’s not just the technology side that is critical.

The Chair (Mr. David Oraziotti): Any further comment? All those in favour of government motion number 9? Those opposed? The motion is carried.

NDP motion number 10: Go ahead, Mr. Tabuns.

Mr. Peter Tabuns: Withdrawn.

The Chair (Mr. David Oraziotti): Okay. Motion number 11.

Mr. Peter Tabuns: I move that clause 5(c) of the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be amended by,

(a) striking out “the private sector” and substituting “the private sector, municipalities, First Nations”; and

(b) striking out “technologies” and substituting “technologies, services and practices.”

Very simply, it would be to the province’s benefit to more explicitly include First Nations within this bill. I think that this amendment does that.

The Chair (Mr. David Orazietti): Ms. Jaczek.

Ms. Helena Jaczek: We do not feel that this is necessary. In terms of (a), the current object is sufficiently broad. Obviously, important partners could include First Nations and other aboriginal communities and organizations. We respect that First Nations have existing governments, and we certainly want to work co-operatively and in a respectful manner with these governments.

In terms of the (b) part of the motion, we do have a very similar one in our motion number 12.

The Chair (Mr. David Orazietti): Any further comment?

Mr. Peter Tabuns: No.

The Chair (Mr. David Orazietti): All those in favour? All those opposed? The motion is lost.

Government motion number 12: Ms. Jaczek.

Ms. Helena Jaczek: I move that clause 5(c) of the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be amended by striking out “technologies” and substituting “technologies and services.”

Similarly, we do want to expand the objects of the Water Technology Acceleration Project to ensure that there is a forum for governments, the private sector and academic institutions to exchange information and ideas on how to make Ontario a leading jurisdiction in the development and commercialization of innovative technologies and services for the treatment and management of water and waste water. We’re simply adding the word “services” to the object of the corporation. Some examples would be innovative information management services critical to operating leading-edge water and waste water treatment technologies, and also training services. We feel that this is a useful addition. It was requested by Ecojustice, the conservation authority and the Ontario Environment Industry Association during their presentations.

The Chair (Mr. David Orazietti): Any further comment? Government motion number 12: All those in favour? Opposed? The motion is carried.

Conservative motion number 13: Mr. Clark, go ahead.

Mr. Steve Clark: I move that section 5 of the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be amended by adding the following clauses:

“(c.1) to encourage water technology research and innovation within existing corporations and small businesses;

“(c.2) to encourage the overall development of stronger domestic environmental firms;”

The Chair (Mr. David Orazietti): Any further comment?

Mr. Steve Clark: Mr. Barrett’s going to make a few comments.

The Chair (Mr. David Orazietti): Mr. Barrett, go ahead.

Mr. Toby Barrett: We know that certainly the province of Ontario and the federal government have put millions of dollars into so many institutions with the mandate of commercialization. We think of MaRS, for example, just down here at College Street and University Avenue, and so many other centres of excellence that are there to conduct technology research and, most importantly, to get them to market, to provide research that can be commercialized. That suggestion was put forward by the Ontario Sewer and Watermain Construction Association as well.

I’ve spoken with the Ontario Environmental Industry Association and they testified here in addition. In their submission to us with respect to encouraging innovation, they stress that while funding research, and funding university-based research, is important, it’s also important to think about existing companies, not necessarily very large corporations but Ontario homegrown companies, in many cases small companies that can ramp things up a little more quickly than universities.

I spent 20 years working for a research organization. I don’t think we were a government agency. I don’t think we commercialized an awful lot during those 20 years—a number of pharmaceuticals, as I recall. It can take decades for this kind of research to come to fruition or to hit the marketplace.

The environmental industry association encourages this government to place an equal emphasis on encouraging research within existing companies and to make use of a company structure that is driven by the marketplace and perhaps is better positioned to get these things out on the market.

The Chair (Mr. David Orazietti): Ms. Jaczek?

Ms. Helena Jaczek: The government basically feels it’s unnecessary to add these particular clauses. The first object of WaterTAP is in fact to assist in promoting the development of the water and waste water sectors. These include both small and large businesses. We see no particular need to specify, as this motion does, these activities.

The Chair (Mr. David Orazietti): Any further comment? Conservative motion number 13: All those in favour? Those opposed? The motion is lost.

Number 14: Mr. Tabuns, go ahead.

Mr. Peter Tabuns: I’ve withdrawn it, Mr. Chair. It’s redundant.

The Chair (Mr. David Orazietti): Government motion 15: Go ahead, Ms. Jaczek.

Ms. Helena Jaczek: I move that clause 5(e) of the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be amended by striking out “technologies” at the end and substituting “technologies and services”.

Essentially, as we've already stated, we want to expand the objects of WaterTAP to include services. The NDP's previous motion, which was withdrawn, essentially had a very similar intent.

We certainly heard from stakeholders such as Ecojustice that this is an area in which WaterTAP could play a greater role, as an example, developing Ontario's certification labelling and verification programs so that companies developing homegrown technologies and services are not obliged to seek such certification using institutions in the United States or elsewhere. It also is something that the city of Toronto requested that we add.

The Chair (Mr. David Orazietti): Further comment? Government motion number 15: All those in favour? Opposed? The motion is carried.

Mr. Tabuns, motion 16.

Mr. Peter Tabuns: I move that clause 5(f) of the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be amended by striking out "government of Ontario" and substituting "government of Ontario and public agencies."

I think, Chair, that we should be very clear that this body, WaterTAP, can also advise the Ontario Clean Water Agency as well as other publicly owned water suppliers.

The Chair (Mr. David Orazietti): Ms. Jaczek?

Ms. Helena Jaczek: Certainly we would acknowledge that as a fact, but we feel that this proposed amendment is not necessary. Simply stating the "government of Ontario" does include all provincial crown public agencies; they do not need to be expressly mentioned.

The Chair (Mr. David Orazietti): Any further comment? All in favour of NDP motion 16? Opposed? The motion is lost.

Number 17: Mr. Tabuns.

Mr. Peter Tabuns: I move that section 5 of the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be amended by striking out "and" at the end of clause (f) and by adding the following clause:

"(f.1) to provide opportunities for First Nations, their members and their water professionals to pursue research, innovation, commercialization and application of water and wastewater technologies, services and practices that provide for the treatment and conservation of water and the protection of human health and the environment; and"

Chair, I believe that for this bill to be fully useful to First Nations in Ontario, it's important that we're very explicit about their role and reaching out to them.

The Chair (Mr. David Orazietti): Ms. Jaczek?

Ms. Helena Jaczek: We certainly believe that there are already many opportunities to work together with aboriginal communities under the proposed act and through other provincial initiatives. The Ministry of the Environment plans to continue to reach out to aboriginal organizations and communities as future regulations, programs and policies are developed, should the act pass.

The experience of aboriginal communities and technical experts will be valuable in the development of

water solutions for remote northern communities with small populations, including the climate extremes and geology typical of the near and the Far North.

In addition to envisaging, designing and implementing water research and demonstration projects with aboriginal communities, there is an opportunity to ensure that these projects include training and job opportunities for aboriginal youth and young professionals.

The province is already working with our aboriginal organizations to provide support on water issues. Aboriginal communities can participate in source protection planning under the Clean Water Act, receive technical training through the Walkerton Clean Water Centre and request our officials to provide advice about their systems.

We're committed to continuing a dialogue with aboriginal communities on water-related issues. Certainly, Ontario is interested in further discussions with aboriginal communities on how we can work together through the proposed Water Opportunities and Water Conservation Act.

The Chair (Mr. David Orazietti): Further comment? NDP motion 17: All in favour? Opposed? The motion is lost.

NDP motion number 18: Mr. Tabuns.

Mr. Peter Tabuns: I move that section 5 of the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be amended by adding the following subsection:

"Public ownership

"(2) In carrying out its objects, the corporation shall respect the province of Ontario's continued commitment to the public ownership and delivery of water and wastewater systems."

My guess again, Madam Parliamentary Assistant, is that you won't be supporting this, but I'm sure that you will state that it's not because you think we should be privatizing these services.

Ms. Helena Jaczek: I'm happy to do that, Chair. There's nothing in the Water Opportunities Act to do with privatization of publicly owned services. We respect the contribution made by those deputants who came to the hearings, that this was a fear they had. But we think that in motion 5, which we've already passed, we have made it very clear that the purposes of the proposed act do not include privatization.

The Chair (Mr. David Orazietti): NDP motion number 18: All those in favour? Opposed? The motion is lost.

That concludes amendments in this section. Shall schedule 1, section 5, as amended, carry? Opposed? The section is carried.

There are no amendments in schedule 1, section 6. Shall it carry? Carried.

NDP motion number 19, section 1, schedule 7: Mr. Tabuns.

Mr. Peter Tabuns: It is withdrawn, Mr. Chair.

The Chair (Mr. David Orazietti): Okay. There are no other amendments. Schedule 1, section 7: Shall it carry? It's carried.

There are no amendments from section 8 through to and including section 14. Schedule 1, sections 8 to 14, there are no amendments. All those in favour? Carried.

Mr. Tabuns: motion 20, schedule 1, section 15. Go ahead.

Mr. Peter Tabuns: I move that section 15 of the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be struck out and the following substituted:

“Crown agency

“15. The corporation is a crown agency within the meaning of the Crown Agency Act.”

I think we need to reinforce the public nature of our efforts in this matter, and an amendment such as this would send a clear signal that that is where the government wants to go.

The Chair (Mr. David Oraziotti): Ms. Jaczek.

Ms. Helena Jaczek: This is certainly something that we don't feel is actually necessary. It was deliberate to make WaterTAP a non-crown agent so that the corporation can act at arm's length of government and serve as a forum for all partners in the water, waste water and stormwater sectors.

We do have an example of this, because this was something that certainly intrigued me. We have an example in a non-crown corporation that the government established in 2008 called the Centre for Research and Innovation in the Bio-Economy, known as CRIBE. CRIBE focuses on commercializing new bioproducts such as eco-friendly fuels, composites and chemicals, and replacing products and services which have traditionally relied on fossil fuels that contribute to climate change, so this is sort of a parallel situation, certainly the way that we see it.

However, to ensure accountability, the bill does include checks and balances for WaterTAP; for example, by requiring the organization to make publicly available an annual report of its affairs. Further, the corporation has to report to the Minister of Research and Innovation, and the minister can give directions to the corporation. Essentially, we did hear from innovators and other stakeholders that they wanted a dedicated organization that will bring stakeholders together and they need the flexibility for this organization to respond especially quickly and effectively. So we will be voting against this motion.

The Chair (Mr. David Oraziotti): Any further comment?

Mr. Peter Tabuns: No, no further comment. Vote, please.

The Chair (Mr. David Oraziotti): NDP motion 20: All in favour? Opposed? The motion is lost.

That's it for section 15. Shall schedule 1, section 15, pass? Carried.

NDP notice: Mr. Tabuns.

Mr. Peter Tabuns: Withdrawn.

The Chair (Mr. David Oraziotti): Withdrawn? Okay.

There are no proposed amendments in sections 16, 17 or 18. Schedule 1, sections 16 through and including 18: Shall it carry? Carried.

Mr. Tabuns: motion 22, section 19.

Mr. Peter Tabuns: Twenty-two? I will withdraw that.

The Chair (Mr. David Oraziotti): Twenty-three is yours as well.

Mr. Peter Tabuns: Withdrawn as well.

The Chair (Mr. David Oraziotti): Okay.

Schedule 1, section 19: Shall it carry? Carried.

Mr. Tabuns, section 20, amendment 24: That's yours.

Mr. Peter Tabuns: I move that section 20 of the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be amended by adding the following subsection:

“Notice of other reports

“(2) As soon as possible after receiving a report required under this section, the minister shall publish notice of the report on the Environmental Registry established under section 5 of the Environmental Bill of Rights, 1993, together with any other information that the minister considers appropriate.”

It's a motion made in the effort to make things more transparent.

The Chair (Mr. David Oraziotti): Ms. Jaczek.

Ms. Helena Jaczek: Certainly the government is committed to transparency and public consultation. I just want to state that if the minister does direct WaterTAP to prepare a report, the minister can take steps to ensure the report is provided to the public, so we feel this provision is essentially unnecessary. Also, just to state that in section 42, the minister's triennial report is required and it will include a summary of the achievements and the activities of WaterTAP.

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The Chair (Mr. David Oraziotti): Any further comment? All in favour of NDP motion 24? Opposed? The motion is lost.

Shall schedule 1, section 20, carry? Carried.

Motion 25, Ms. Jaczek.

Ms. Helena Jaczek: I move that section 21 of the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be amended by,

(a) striking out “assets and liabilities” in subsection (2) and substituting “assets, liabilities, rights and obligations”;

(b) striking out “assets and liabilities” in clause (3)(b) and substituting “assets, liabilities, rights and obligations”; and

(c) striking out “assets and liabilities” in subsection (4) and substituting “assets, liabilities, rights and obligations.”

The Chair (Mr. David Oraziotti): Further comment?

Ms. Helena Jaczek: This is essentially a technical amendment to clarify that any assets, liabilities, rights and obligations of WaterTAP would be transferred upon the winding up and dissolution of the corporation. It's essentially to cover off the windup of the corporation. This amendment maintains consistency of language with similar provisions and amendments to schedule 3 of Bill 72.

The Chair (Mr. David Oraziotti): Any further comment? All those in favour of the government motion? Opposed? The motion is carried.

Shall schedule 1, section 21, as amended, carry? Carried.

NDP motion, or notice—

Mr. Peter Tabuns: No, 26.

The Chair (Mr. David Oraziotti): Sorry: motion 26. Mr. Tabuns, go ahead.

Mr. Peter Tabuns: I move that the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be amended by adding the following section:

“Freedom of Information and Protection of Privacy Act

“21.1 The corporation is an institution for the purposes of the Freedom of Information and Protection of Privacy Act.”

Again, very simply, I think the people of Ontario should be able to inquire into the business of the corporation that will be set up.

The Chair (Mr. David Oraziotti): Thank you, Mr. Tabuns. Ms. Jaczek.

Ms. Helena Jaczek: The Freedom of Information and Protection of Privacy Act already provides the government with a mechanism to apply the act to WaterTAP by designating it as an institution. At this point, the government needs to develop the details about implementing WaterTAP's mandate and governance structure in consultation with stakeholders. Only then will it be an appropriate time to discuss with stakeholders and for the government to determine if the corporation should be designated under FIPPA. We will not be supporting this motion.

The Chair (Mr. David Oraziotti): Any further comment? All in favour of NDP motion 26? Opposed? The motion is lost.

There are no amendments in sections 22 or 23 to schedule 1. Shall they carry? Carried.

Mr. Tabuns: section 24, amendment 27. Go ahead.

Mr. Peter Tabuns: I move that section 24 of the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be amended by adding the following definition:

“‘low input sustainable agriculture’ means approaches to profitable agriculture that seek to optimize the management and use of on-farm resources and to minimize the use of off-farm purchased resources, including fertilizers and pesticides.”

Simply put, it's advancing another part of the water agenda.

The Chair (Mr. David Oraziotti): Ms. Jaczek?

Ms. Helena Jaczek: Part III of this act is focused on the long-term sustainability of municipal water, waste water and stormwater services, and the regulation of agricultural practices is addressed under other provincial statutes, including the Nutrient Management Act. Therefore, we feel that this proposed definition is beyond the scope of this part and will not be supporting it.

The Chair (Mr. David Oraziotti): NDP motion 27: All those in favour? Opposed? The motion is lost.

Shall schedule 1, section 24, carry? Carried.

Schedule 1, government motion 28: Ms. Jaczek.

Ms. Helena Jaczek: I move that clause 25(2)(b) of the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be struck out and the following substituted:

“(b) new or different information.”

This is essentially a technical amendment. The amendment clarifies the circumstances under which a regulated entity must amend a municipal water sustainability plan prepared under part III of the Water Opportunities Act, 2010. The purpose of the amendment is to ensure that if the regulations governing the contents of a municipal water sustainability plan are amended, municipal service providers would be under an obligation to amend their plans to satisfy the new content requirements set out in the regulations.

The Chair (Mr. David Oraziotti): Further comment? Government motion number 28: All in favour? Opposed? That's carried.

Government motion number 29: Ms. Jaczek.

Ms. Helena Jaczek: I move that section 25 of the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be amended by adding the following subsection:

“Approval and submission of amended plans

“(2.1) A regulated entity shall, in accordance with such requirements as may be prescribed, approve amendments to its plan and, in such circumstances as may be prescribed, submit its amended plan to the minister.”

Again, this is a technical amendment. The amendment adds a new subsection to clarify that when a regulated entity amends its municipal water sustainability plan, it is required to approve the amendments to its plan in accordance with any requirements set out in the regulations.

The Chair (Mr. David Oraziotti): Any further comment? Government motion number 29: All in favour? Opposed? The motion is carried.

Conservative motion number 30: Mr. Clark.

Mr. Steve Clark: I move that section 25 of the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be amended by adding the following subsection:

“Amalgamation not required

“(3.1) A regulated entity is not required to prepare or amend a plan if the plan or amendment would have the effect of,

“(a) requiring the regulated entity to amalgamate with another municipal service provider; or

“(b) requiring a municipal service to which the plan applies to be amalgamated with a municipal service provided by another municipal service provider.”

Mr. Barrett is prepared to speak to that amendment.

The Chair (Mr. David Oraziotti): Mr. Barrett, go ahead.

Mr. Toby Barrett: By way of explanation, this motion came from the presentation by CUPE. They indicated that their membership feels this proposed legislation falls short on a number of issues. We focused on one,

which was recommendation number 4 from the Canadian Union of Public Employees. I'll just read it for the committee:

"Smaller, northern, remote and aboriginal water utilities should not be put in the position of being forced to join or amalgamate with other jurisdictions. This will erode accountability for residents of 'have-not' municipalities."

Oftentimes, if it's a smaller municipality or organization, decisions are being made by the larger one, or the perception is that decisions are being made by the organization or the municipality that, in effect, has the decision-making or is in control. Whether it's real or not, that perception can be problematic.

They did go on. They talked about the municipal plans in the bill, which they felt were unclear. As they said, the language allows for mergers instead of best practices and does not address, as I indicated before, the unique needs of aboriginal communities, remote communities and northern communities.

One other point that they made with respect to First Nations: There's no mention of the ability to form full public partnerships between a First Nation and, I would assume, a neighbouring municipality, despite the fact that some of the First Nations do have responsibility to ensure safe and clean water for their members.

I know this is done. I know, down our way, that the Mississaugas of the New Credit have an arrangement with Norfolk county with respect to a water line. I don't know whether that kind of an arrangement is accommodated in this Water Opportunities Act. I think it should be. Norfolk county and the Mississaugas worked this out; there is a precedent there for this to be captured in legislation.

1510

The Chair (Mr. David Oraziotti): Ms. Jaczek?

Ms. Helena Jaczek: Certainly, if there is some perception that there's something in part III to affect the management structure of municipal services or to force their amalgamation, that perception is false. Part III has nothing to do with this. It's focused on ensuring the long-term sustainability of our municipal water, waste water and stormwater services. So we believe that this motion is completely unnecessary.

The Chair (Mr. David Oraziotti): Conservative motion number 30: All those in favour? All those opposed? The motion is lost.

Government motion number 31: Ms. Jaczek.

Ms. Helena Jaczek: I move that subsection 25(4) of the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be struck out and the following substituted:

"Review of plans

"(4) A regulated entity shall ensure that such review of its plan as may be required by the regulations is undertaken and completed in accordance with such requirements as may be prescribed and that the report of the review is approved and submitted to the minister in accordance with such requirements as may be prescribed."

This is a technical amendment. It clarifies that a report of a review of a municipal water sustainability plan must be approved by the municipal service provider that prepared the plan. The current bill is silent on whether approval of a report dealing with a plan review is required.

The Chair (Mr. David Oraziotti): Any further comment? Government motion number 31: All those in favour? Opposed? The motion is carried.

Number 32: Ms. Jaczek.

Ms. Helena Jaczek: I move that subsection 25(5) of the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be struck out and the following substituted:

"Approval by municipality

"(5) In such circumstances as may be prescribed, if a regulated entity that has jurisdiction over a municipal service is not a municipality, a plan, amendment to a plan or proposed report of a required review of a plan that relates to the municipal service shall not be submitted to the minister without the approval of the municipality in which the municipal service is provided."

Again, this is a technical amendment. It essentially cleans up the language of the existing provision. There are instances in Ontario, and perhaps Mr. Barrett alluded to one of these, where municipal services are not provided by a municipality but by a body that is established by one or more municipalities. There's a case, for instance, in the London area where several participating municipalities came together in the late 1990s to form water boards to own and operate the joint board of management for the Lake Huron and Elgin area primary water system. In order to address these situations, this amendment is required.

The Chair (Mr. David Oraziotti): Any further comment? Government motion number 32: All those in favour? Opposed? The motion is carried.

That's it for section 25. Shall schedule 1, section 25, as amended, carry? Opposed? That's carried.

Section 26, government motion 33: Ms. Jaczek.

Ms. Helena Jaczek: I move that section 26 of the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be amended by adding the following subsection:

"Requirements for plan

"(0.1) A plan must satisfy the requirements prescribed by the regulations."

The Chair (Mr. David Oraziotti): Further comment?

Ms. Helena Jaczek: Under the existing provisions of the bill, a municipal water sustainability plan must have all the components listed in subsection 26(1). The purpose of this amendment, and the one immediately following this, is to provide greater flexibility in the phasing in of municipal water sustainability plans.

Many municipalities—the city of Hamilton, the city of Toronto, the city of London—and, in fact, AMO, with whom clearly we have consulted considerably, asked the government to ensure that the regulations provide flexibility in the rollout of municipal water sustainability plans. They pointed out that there are a wide range of

municipal service providers. There are some that oversee very large municipal water, waste water and stormwater services in urban settings and others that oversee much smaller-scale services in rural settings. Essentially, this amendment allows for phasing in of these plans.

The Chair (Mr. David Oraziotti): Thank you, Ms. Jaczek. Any further comment? Government motion number 33: All those in favour? Opposed? The motion is carried.

Number 34: Ms. Jaczek?

Ms. Helena Jaczek: I move that subsection 26(1) of the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be amended by striking out the portion before paragraph 1 and substituting the following:

“Contents of plan

“(1) Without limiting the generality of subsection (0.1), the regulations may require a plan to include any of the following matters, prepared in accordance with such requirements as may be prescribed, with respect to each municipal service to which the plan applies:”

Again, a very similar explanation: As in the previous motion, this was requested by municipal stakeholders to allow them some flexibility in the rollout of municipal water sustainability plans.

The Chair (Mr. David Oraziotti): Any further comment? Government motion number 34: All those in favour? Opposed? The motion is carried.

Mr. Tabuns, NDP motion number 35.

Mr. Peter Tabuns: I move that paragraph 1 of subsection 26(1) of the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be struck out and the following substituted:

“1. A sustainable asset management plan for all infrastructure, including green infrastructure.”

The purpose of this amendment is to further reinforce the idea that green infrastructure has got to be part of any sensible or useful conservation plan.

The Chair (Mr. David Oraziotti): Ms. Jaczek?

Ms. Helena Jaczek: It's our feeling that the amendment is unnecessary. Green infrastructure that is related to a municipal water, waste water or stormwater service is part of its physical infrastructure. Definitely, green infrastructure will be encouraged as part of a diverse suite of sustainable water management options to be included in these plans, but we don't feel that we need this specified in this way in the act.

The Chair (Mr. David Oraziotti): Any further comment? NDP motion: All those in favour? Opposed? The motion is lost.

Number 36: Mr. Clark.

Mr. Steve Clark: For fear that the parliamentary assistant would call this amendment unnecessary also, I'll move it anyway.

I move that paragraph 2 of subsection 26(1) of the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be struck out and the following substituted:

“2. A financial plan, including cost estimates.”

I'll turn the show over to my colleague.

Mr. Toby Barrett: I know when Fred Hahn testified on behalf of his membership with the Canadian Union of Public Employees that the concern for his members—tough economic times, concerns around salary and wages, as I recall. I know with former minister David Caplan's sewage bill, or water and sewer bill, there were some dollar figures bandied about—\$600 a year, I think it was. I know the Premier was asked what would be the cost of this water bill. There was no answer. I asked Mr. Fred Hahn about this, and he indicated during testimony here at the witness table that if municipalities are responsible for introducing new technologies and upgrading the current systems—if all of this is done only on the backs of residential users, Mr. Hahn told this committee that, in his estimate, the costs would be astronomical. That was the phrase that he used. That's worrisome.

I don't know whether anybody around this table has looked at their electricity lately, but there's certainly a very real concern on behalf of the opposition about what this legislation will cost. At minimum, we ask, as the motion indicates, for a financial plan, and we ask for some cost estimates.

The Chair (Mr. David Oraziotti): Ms. Jaczek?

Ms. Helena Jaczek: Mr. Clark is certainly correct: The government does feel that the provision is unnecessary.

In 2007, our government put in place a regulation governing financial plans under the Safe Drinking Water Act, 2002: Ontario regulation 453/07. It set out in detail what is required of financial plans by owners of municipal residential drinking water systems. Part III of this act will give the government the authority to require financial plans for municipal waste water and stormwater services.

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We intend to work with our municipal service partners in developing the regulations that will detail the content of financial plans and to build upon what is already required under the Safe Drinking Water Act. So in summary, we feel that this is unnecessary.

The Chair (Mr. David Oraziotti): Any further comment? Conservative motion 36: All those in favour? All those opposed? The motion is lost.

Motion 37: Mr. Clark.

Mr. Steve Clark: I move that paragraph 3 of subsection 26(1) of the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be amended by striking out “a water conservation plan” at the end and substituting “a water conservation plan, including a framework with targets for industrial water users and others”.

I'll ask Mr. Barrett to make his comments.

Mr. Toby Barrett: Further to that, the concern with this legislation is that it does not provide any distinction between the water use by residential homes and industry. I know CUPE, again, made mention that with respect to addressing conservation needs, residential consumers need to be informed about their use and purchasing decisions. As he indicated, the residential sector only makes up about 10% of the use of water in the province of

Ontario. He feels there must be industrial solutions beyond, say, developing new technology, developing new companies, for that matter.

That seemed to be the concern: that Bill 72 is silent with respect to heavy industrial water users, with the exception—there's one exception—referring to building codes and referring to procurement. But other than that, there's very little mention of industrial water use.

The Chair (Mr. David Oraziotti): Ms. Jaczek, do you want to respond to that?

Ms. Helena Jaczek: Again, we feel that the addition of this provision is unnecessary. Such detail is not necessary in the act. How water conservation plans deal with industrial water users and other users of a municipal water service can be determined in consultation with stakeholders during the development of the regulations. Secondly, industrial and commercial water takers are regulated under the Ontario Water Resources Act. They are required to obtain a permit to take water from the Ministry of the Environment. One aspect of that permit to take water is water conservation. So there's ample authority, essentially, within the Ontario Water Resources Act by regulation to impose water conservation measures on industrial and commercial water users.

The Chair (Mr. David Oraziotti): Conservative motion 37: All those in favour? Opposed? The motion is lost.

Motion 38: Ms. Jaczek.

Ms. Helena Jaczek: I move that subparagraph 5 ii of subsection 26(1) of the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be amended by striking out "technologies and services" and substituting "technologies, services and practices."

As we previously stated, we want to broaden the scope of the purpose of the act and, in this particular part, ensure that municipal water sustainability plans will, in accordance with the regulations, consider practices such as stormwater harvesting, water reuse and practices that promote the use of leafy green infrastructure.

This was a response to stakeholders such as Ecojustice, the Canadian Environmental Law Association and Conservation Ontario, which all called on the government to ensure that these practices are included in the scope of the bill.

The Chair (Mr. David Oraziotti): Any further comment? Government motion number 38: All those in favour? Opposed? The motion is carried.

NDP motion number 39: You'll notice in your package that there are two. The first one you can ignore. Mr. Tabuns, I understand, will read into the record 39R.

Mr. Peter Tabuns: Mr. Chair, I'm withdrawing 39R. I think the government has made clear its position on most of the substance in this resolution.

The Chair (Mr. David Oraziotti): Thank you, Mr. Tabuns.

Conservative motion number 40: Mr. Clark, go ahead.

Mr. Steve Clark: I move that section 26 of the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be amended by adding the following subsection:

"Sustainability of water

"(2.1) Every plan shall recognize the need for sustainability of water for ecosystem functions as well as for human consumption."

The Chair (Mr. David Oraziotti): Mr. Barrett.

Mr. Toby Barrett: This was an idea put forward by Conservation Ontario, again building on their advocacy for a watershed-based approach and advocating for an integrated watershed management approach. They indicated that municipal water sustainability plans must be completed under the umbrella of an integrated watershed management to ensure sustainable management and funding for all components of water, waste water and stormwater management, emphasizing the plans must recognize sustainability of water for ecosystem functions as well as human consumption.

The Chair (Mr. David Oraziotti): Ms. Jaczek.

Ms. Helena Jaczek: Again, we feel this amendment is unnecessary. These are the kinds of issues that will be considered in consultation during the development of regulations. How matters like the ecosystem and how that affects the delivery of water, waste water and stormwater services will be worked out as we go forward.

The Chair (Mr. David Oraziotti): Any further comment?

Mr. Toby Barrett: There was further comment from Justice O'Connor in his report from the Walkerton inquiry. He indicated at that time—this was about 10 years ago, or Walkerton was 10 years ago—"Although the Clean Water Act is based on a watershed approach to develop source protection plans, it does not address water uses for all purposes"—in other words, both municipal private systems or water for both human and ecosystem needs. I don't know whether Justice O'Connor's advice has been picked up in any subsequent legislation, but we don't see that advice represented in this proposed legislation.

The Chair (Mr. David Oraziotti): Ms. Jaczek, do you want to respond?

Ms. Helena Jaczek: Again, clearly these are important considerations, and certainly in consultation with stakeholders, as we look at the regulations governing the content of municipal water sustainability plans, these are the things that will be considered at that time.

The Chair (Mr. David Oraziotti): Okay. Conservative motion number 40: All those in favour? Opposed? The motion is lost.

Mr. Clark, number 41. Go ahead.

Mr. Steve Clark: I move that section 26 of the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be amended by adding the following subsection:

"Timetables

"(3.1) A plan that specifies a time for a person to do something shall ensure that the time is realistic, having regard to the financial resources of the person."

The Chair (Mr. David Oraziotti): Further comment?

Mr. Toby Barrett: Again, as elected representatives we certainly hear the reports from our constituents with respect to the fact that electricity bills are heading

upwards to a 50% increase by the year 2015. Much of that is perhaps unintended—I would hope unintended—consequences of the Green Energy Act. People are struggling. They're struggling to make ends meet with their current bills, and the concern is that this has to be phased in. We need time to ensure that people know what to expect and what changes they could make with respect to any hit from the McGuinty water bill.

The Chair (Mr. David Oraziotti): Any further comment? Ms. Jaczek, go ahead.

Ms. Helena Jaczek: I think we've shown that we are sensitive to the issue of timing and flexibility in relation to the phasing in of plans. We have now passed motions 33 and 34 which address this issue and therefore we don't feel PC motion 41 is one that we will support.

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The Chair (Mr. David Oraziotti): Any further comment? Conservative motion number 41: All those in favour? Opposed? That motion is defeated.

That's all the amendments in section 26. Shall schedule 1, section 26, as amended, carry? Carried.

Section 27, government motion number 42.

Ms. Helena Jaczek: I move that section 27 of the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be amended by adding the following subsection:

"Review of joint plans

"(4) Unless otherwise directed by the minister, any review of a joint plan or a joint part of a plan must be undertaken by the regulated entities that originally prepared the joint plan or part or by their successors."

This is a technical amendment. We did talk about those situations where there are joint municipal water service plans and it requires that such plans be amended jointly. This basically ensures that the review is also prepared jointly.

The Chair (Mr. David Oraziotti): Any further comment? All those in favour of government motion number 42? Opposed? The motion is carried.

Shall schedule 1, section 27, as amended, carry? Carried.

NDP motion number 43: Mr. Tabuns.

Mr. Peter Tabuns: Withdrawn.

The Chair (Mr. David Oraziotti): Okay. Number 44 is yours as well.

Mr. Peter Tabuns: Withdrawn, noting that the government has already made its position clear on a variety of these matters in the debate so far.

The Chair (Mr. David Oraziotti): Fair enough. Government motion 45: Ms. Jaczek.

Ms. Helena Jaczek: I move that section 28 of the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be amended by adding the following subsection:

"Publication

"(3) The minister shall publish performance indicators established under this section on the Environmental Registry established under section 5 of the Environmental Bill of Rights, 1993, together with a summary of

the information the minister relied on to establish each performance indicator."

This amendment is being proposed to provide greater transparency under the bill. This provision would require the minister to publish any performance indicators established under the section on the Environmental Registry established under the Environmental Bill of Rights, 1993. Many stakeholders such as Ecojustice and the Canadian Environmental Law Association called on the government to consider amending the bill to ensure greater transparency, and we feel that this motion responds to their concerns.

The Chair (Mr. David Oraziotti): Any further comment? All those in favour of the government motion? Opposed? That's carried.

Shall schedule 1, section 28, as amended, carry? Carried.

NDP motion number 46.

Mr. Peter Tabuns: I move that section 29 of the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be amended by adding the following subsections:

"Mandatory performance targets

"(2) The minister shall, by direction, establish performance targets for municipalities with projected population growth.

"Targets to be more stringent over time

"(3) The minister shall, in respect of the performance targets established under subsection (2), establish more stringent targets over time."

Very simply, there's an expectation that we will face greater and greater difficulties in the decades to come to provide ourselves with clean, safe water. It's now that we need to set the targets to reduce our water consumption.

The Chair (Mr. David Oraziotti): Ms. Jaczek?

Ms. Helena Jaczek: We just want to emphasize again that the proposed Water Opportunities Act is intended to be enabling legislation. Before establishing performance targets, the government wants to work with its partners in the municipal service sector, with the public and other stakeholders to ensure that appropriate performance targets are established, ones that are sensitive to the circumstances and challenges faced by the wide range of municipal service providers in Ontario. We don't feel there's any need to make this provision mandatory, and we look forward to working with our municipal partners as we go forward.

The Chair (Mr. David Oraziotti): NDP motion number 46: All those in favour? Opposed? The motion is lost.

Number 47: Ms. Jaczek.

Ms. Helena Jaczek: I move that section 29 of the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be amended by adding the following subsection:

"Publication

"(2) The minister shall publish performance targets established under this section on the Environmental Registry established under section 5 of the Environ-

mental Bill of Rights, 1993, together with a summary of the information the minister relied on to establish each performance target.”

By way of explanation, this amendment is being proposed to provide greater transparency to the act. Many stakeholders, such as Ecojustice and the Canadian Environmental Law Association, called on the government to consider amending the bill to ensure greater transparency, and we believe that this motion responds to their concerns.

The Chair (Mr. David Oraziotti): Any further comments? Government motion number 47: All those in favour? Opposed? The motion is carried.

That’s it for section 29. Shall schedule 1, section 29, as amended, carry? Okay, it’s carried.

NDP motion number 48: Mr. Tabuns.

Mr. Peter Tabuns: Withdrawn.

The Chair (Mr. David Oraziotti): Number 49 is yours as well.

Mr. Peter Tabuns: Withdrawn.

The Chair (Mr. David Oraziotti): That’s it for 30. Shall schedule 1, section 30, carry? Carried.

Sections 31 through and including 34, there are no proposed amendments. Shall those sections carry? Carried.

Government motion number 50, section 35, Ms. Jaczek.

Ms. Helena Jaczek: I move that clause 35(b) of the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be struck out and the following substituted:

“(b) deeming a water service, wastewater service or stormwater service under the jurisdiction of a regulated entity to be a municipal service.”

By way of explanation, this is a technical amendment. The definition of “municipal service” in section 24 “means, subject to the regulations, municipal water services, municipal wastewater services or municipal stormwater services.” This is in fact just simply to clarify exactly what we mean in this particular section. As I said, it’s a technical amendment.

The Chair (Mr. David Oraziotti): Further debate? Mr. Tabuns, go ahead.

Mr. Peter Tabuns: I don’t fully understand. I must be missing something. What advantage is there to moving this amendment?

Ms. Helena Jaczek: It’s simply a question of clarity. We just want to make sure what a municipal service is. As an example, I referenced the joint board of management for the Lake Huron and Elgin area primary water system. It is operated on behalf of many municipalities, and we’re simply saying—I believe, and I’ll ask legal counsel if they wish to clarify further—that this is to include those types of joint services.

Mr. Peter Tabuns: Okay.

The Chair (Mr. David Oraziotti): Any further comment? Government motion number 50: All those in favour? Opposed? Motion carries.

Number 51.

Ms. Helena Jaczek: I move that clause 35(c) of the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be amended by striking out “approval, amendment” in the portion before subclause (i) and substituting “approval, submission, amendment”.

Again, by way of explanation, the addition of the word “submission” is a technical amendment. It’s done to ensure the regulations can deal with the submission of the plan to the minister. As an example, the regulations can then specify the circumstances when a plan has to be submitted to the minister after it has been amended.

The Chair (Mr. David Oraziotti): Further questions or comments? Government motion number 51: All those in favour? Opposed? The motion is carried.

Number 52.

Ms. Helena Jaczek: I move that clause 35(f) of the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be struck out.

Again, a technical amendment: Clause 35(f) gives the Lieutenant Governor in Council the authority define any work or expression used in this part that is not defined in this part. A later motion we have, motion 62, would, if passed, add a provision to the bill so that this regulation-making authority would apply to the entire proposed act, not just part III.

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The Chair (Mr. David Oraziotti): Any further comment? All in favour of government motion 52? Opposed? It’s carried.

Conservative motion 53: Mr. Clark, go ahead.

Mr. Steve Clark: I move that section 35 of the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be amended by adding the following subsection:

“Phasing of plan regulations

“(2) Regulations made under subsection (1) with respect to municipal water sustainability plans shall be made in a manner that permits each regulated entity to prepare its plan in phases.”

I think that was spurred on by the member for Burlington, who attended the hearings. As well, when I look at AMO’s response, certainly they mention the impact on some small municipalities, rural municipalities and remote northern communities. Even AMO talked about the fiscal and human resource impacts, so I believe that’s why the amendment was placed to allow the opportunity for a phased-in plan.

The Chair (Mr. David Oraziotti): Any further comment? Mr. Barrett, do you want to add to that?

Mr. Toby Barrett: Yes, a further comment. We feel this should be presented within the legislation itself rather than waiting for a regulation down the road. The municipal water sustainability plans include a number of requirements which suggest the advisability of a number of phases. There’s an asset management plan required, a financial plan required—we’d like to see more of that right now, actually—a water conservation plan required, a plan for strategy, a plan for maintaining the service, a plan for improving the service, a plan for risk assessment

and plans for other prescribed information, which is unknown to me what that would be.

We feel that it's important to make clear to everyone that this kind of planning can be rolled out in phases, especially with respect to sorting out the cost for not only municipalities but the cost for the users of water themselves.

As far as phasing something out, we have legislation here that comes on the heels of legislation by the previous government. That was seven years ago. This has waited seven years to be phased in. I don't know whether it's fair to ask municipalities to come up with these multi-faceted plans on a certain date without giving them some leeway to ease into it, especially on the financial side.

The Chair (Mr. David Oraziotti): Thank you, Mr. Barrett. Ms. Jaczek, do you want to respond?

Ms. Helena Jaczek: We certainly are sensitive to the need for municipalities to have that kind of phasing in. That's why we proposed our motions 33 and 34, which have been passed earlier today. We feel that that will allow municipalities to have the flexibility that they require and have told us they need.

The Chair (Mr. David Oraziotti): Conservative motion 53: All those in favour? Opposed? The motion is lost.

Number 54: Mr. Clark, go ahead.

Mr. Steve Clark: I move that section 35 of the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be amended by adding the following subsection:

"Consultation and implementation

"(3) A regulation under subsection (1) with respect to municipal water sustainability plans;

"(a) shall not be made unless there has been adequate consultation with the private sector and municipalities; and

"(b) shall take effect as soon as possible after the consultation referred to in clause (a)."

The Chair (Mr. David Oraziotti): Mr. Barrett, go ahead.

Mr. Toby Barrett: Consultation doesn't hurt. We've included in this motion a concept of further participation, to be spelled out in this legislation, for both municipalities and companies that would be involved.

One reason we brought this forward: We sat through the committee hearings, and there was no deputation from a municipality and there was only one deputation from a company. We had a fairly small number of deputations, primarily from certain interest groups. In speaking with people in the business, there is always that concern that they be invited, that they be involved, in the regulations stage, to have an opportunity to participate and be part of the process.

Today is municipal election day. Clearly, as we've indicated with the very first motion today, municipalities and municipal councillors in the last several months have had very little opportunity to participate in the proposed legislation. At minimum, I think it's important that they,

along with companies, be invited and be heavily involved in participation in the regulations.

The Chair (Mr. David Oraziotti): Ms. Jaczek, go ahead.

Ms. Helena Jaczek: While we feel that this suggested amendment is unnecessary, the Ministry of the Environment is subject to the Environmental Bill of Rights. If this act is passed, the government is committed to ensuring that proposed regulations under this act are subject to the public participation requirements in the EBR by prescribing this act under the EBR.

Again, as I've had the opportunity to state many times, the government is committed to working with its partners in the municipal service sector, and other stakeholders, including businesses and the public, when developing regulations under this act.

The Chair (Mr. David Oraziotti): Any further comments? Conservative motion number 54: All those in favour? Opposed? The motion is lost.

That's it for section 35. Shall schedule 1, section 35, as amended, carry? Carried.

Section 36: There are no amendments. Shall section 36 carry? Carried.

Motion number 55: Ms. Jaczek.

Ms. Helena Jaczek: I move that paragraph 1 of subsection 37(4) of the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be amended by striking out "the public agency's operations" at the end and substituting "the public agency's prescribed operations".

By way of explanation, what we're doing here is making sure it's understood that this amendment applies to public agencies, such as ministries of the Ontario government, or entities including municipalities, or classes of entities that are prescribed as public agencies in the regulations.

This addresses concerns of municipalities like the city of Toronto—and we have some other stakeholder requests—that public agencies need more flexibility in reporting requirements related to their water conservation plans.

The amendment limits the requirement that a water conservation plan contain a summary of annual water use so that it applies only to those operations of the public agency that are prescribed in the regulations.

There was a feeling that the way the act was originally worded—our new wording removes the potentially onerous requirement that a public agency summarize its water use for every one of its operations. It may not be actually possible. There may not be sufficient data. So this is why we're proposing this amendment.

The Chair (Mr. David Oraziotti): Any further comments? Government motion number 55: All those in favour? Opposed? The motion's carried.

Shall schedule 1, section 37, as amended, carry? Carried.

Section 38: There are no amendments. Shall section 38 carry? Carried.

Section 39: Mr. Tabuns has a revised motion 56R.

Mr. Peter Tabuns: It's withdrawn, Mr. Chair.

The Chair (Mr. David Orazietti): Okay.

Government motion 57: Ms. Jaczek.

Ms. Helena Jaczek: I move that subsection 39(1) of the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be amended by striking out “technologies and services” and substituting “technologies, services and practices”.

I think as we’ve said before, this is to broaden the purpose. I believe that the previous, now withdrawn, NDP motion was very much on the same wavelength as what we’re proposing here.

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The Chair (Mr. David Orazietti): Any further comments? Those in favour? Opposed? The motion is carried.

Mr. Tabuns’ motion 58R, is that—

Mr. Peter Tabuns: Also withdrawn.

The Chair (Mr. David Orazietti): Ms. Jaczek, motion 59.

Ms. Helena Jaczek: I move that subsection 39(2) of the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be amended by striking out “technologies and services” and substituting “technologies, services and practices”.

Again, this is complementary to the previous government motion and the same intention as the now withdrawn NDP motion.

The Chair (Mr. David Orazietti): Any further comment? All those in favour? Carried.

Shall schedule 1, section 39, as amended, carry? Carried.

Sections 40 and 41, there are no amendments. Shall those sections carry? Carried.

Section 42: Ms. Jaczek, motion 60.

Ms. Helena Jaczek: I move that clause 42(1)(c) of the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be amended by striking out “technologies” and substituting “technologies and services”.

Again, we want to ensure that the report prepared by the Minister of the Environment at least once every three years under the Water Opportunities Act, 2010, also include the report on the broadened purpose, I think in this case, of the agency. Actually it’s to expand the Ontario Clean Water Agency’s objects. Again, it’s to expand the opportunity to report on technologies and services.

The Chair (Mr. David Orazietti): Any further comment? Motion 60: All those in favour? Opposed? The motion is carried.

Ms. Jaczek, motion 61.

Ms. Helena Jaczek: I move that clause 42(1)(e) of the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be amended by striking out “technologies and services” and substituting “technologies, services and practices”.

Again, this is consistent throughout a number of our motions to ensure that we have broadened the purpose to include practices.

The Chair (Mr. David Orazietti): Any further comment on 61? All those in favour? Carried.

That’s it for amendments on section 42. Shall schedule 1, section 42, as amended, carry? Agreed.

Motion 62.

Ms. Helena Jaczek: I move that the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be amended by adding the following part:

“Part VI.1, Regulations

“Regulations

“42.1 The Lieutenant Governor in Council may make regulations,

“(a) defining any word or expression used in any part of this act that is not defined in that part;

“(b) exempting any person or thing from this act or any provision of this act, subject to such conditions as may be prescribed by the regulations.

“Amendments to adopted documents

“42.2(1) If a regulation made under this act adopts a document by reference and requires compliance with the document, the regulation may adopt the document as it may be amended from time to time.

“When adoption of amendment effective

“(2) The adoption of an amendment to a document that has been adopted by reference comes into effect upon the ministry publishing notice of the amendment in the Ontario Gazette or in the Environmental Registry established under section 5 of the Environmental Bill of Rights, 1993.”

By way of explanation, this motion adds a new part to the proposed Water Opportunities Act. The new part would simply ensure that the Lieutenant Governor in Council can make regulations that: (1) exempt a personal entity from a provision of the act; (2) define a term or expression not defined in the act; and (3) adopt a document as it may be amended from time to time.

These ancillary types of regulation-making authorities are consistent with other statutes administered by the Ministry of the Environment.

The Chair (Mr. David Orazietti): Any further comments on 62? Those in favour? Opposed? The motion is carried.

Motion 63.

Ms. Helena Jaczek: I move that the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be amended by adding the following part:

“Part VI.2

“Amendments to this act

“Bill 65—Not-for-Profit Corporations Act, 2010

“42.3(1) This section applies only if Bill 65 (Not-for-Profit Corporations Act, 2010), introduced on May 12, 2010, receives royal assent.

“(2) References in this section to provisions of Bill 65 are references to those provisions as they were numbered in the first reading version of the bill.

“(3) On the later of the day section 13 of this act comes into force and the day subsection 4(1) of Bill 65 comes into force, section 13 of this act is repealed and the following substituted:

“Application of Not-for-Profit Corporations Act, 2010, Corporations Information Act

“13. The Not-for-Profit Corporations Act, 2010 and the Corporations Information Act do not apply to the corporation, except as prescribed by the regulations.

“(4) On the later of the day clause 23(b) of this act comes into force and the day subsection 4(1) of Bill 65 comes into force, clause 23(b) of this act is amended by striking out ‘Corporations Act, and substituting ‘Not-for-Profit Corporations Act, 2010’.”

By way of explanation, I think we’re all aware that we now have the new Not-for-Profit Corporations Act, 2010, and it is simply replacing references to the Corporations Act with the Not-for-Profit Corporations Act.

The Chair (Mr. David Oraziotti): Any further comment? Government motion number 63: All those in favour? Opposed? It’s carried.

Number 64: Ms. Jaczek, go ahead.

Ms. Helena Jaczek: I move that section 43 of the Water Opportunities Act, 2010, as set out in schedule 1 to the bill, be struck out and the following substituted:

“Commencement

“43(1) Subject to subsection (2), the act set out in this schedule comes into force on the day the Water Opportunities and Water Conservation Act, 2010 receives royal assent.

“Same

“(2) Part II comes into force on a day to be named by proclamation of the Lieutenant Governor.”

By way of explanation, this is a technical amendment which provides that schedule 1 of Bill 72, the Water Opportunities Act, 2010, with the exception of part II of the act dealing with the Water Technology Acceleration Project, comes into force on royal assent rather than on a later date to be named by proclamation of the Lieutenant Governor. So, as I say, a technical amendment.

The Chair (Mr. David Oraziotti): Any further comment on motion 64? All those in favour? Opposed? The motion is carried.

That’s it for 43. Shall schedule 1, section 43, as amended, carry? Carried.

There are no amendments in section 44. All in favour? Opposed? Section 44 is carried.

Shall schedule 1, as amended, carry? Carried.

There are no amendments to schedule 2. Shall schedule 2 carry? Carried.

Interjection.

The Chair (Mr. David Oraziotti): Sorry, sections 1, 2 and 3: I need to get those on the record. Shall they carry? Carried.

Shall schedule 2 carry? Carried.

Schedule 3, section 1: There are no amendments. Shall section 1 carry? Carried.

Section 2: There are no amendments. Shall it carry? Carried.

Section 3, NDP motion number 65: Mr. Tabuns.

Mr. Peter Tabuns: It is withdrawn.

The Chair (Mr. David Oraziotti): Okay.

Ms. Jaczek, number 66.

Ms. Helena Jaczek: I move that clause 49(1)(b) of the Capital Investment Plan Act, 1993, as set out in section 3 of schedule 3 to the bill, be amended by striking out “technologies” and substituting “technologies and services.”

By way of explanation—again, very similar to the now withdrawn NDP motion 65—we’re broadening the scope of OCWA and their objects by including the word “services.”

The Chair (Mr. David Oraziotti): Government motion number 66: Any further comments? All those in favour? Opposed? It’s carried.

Mr. Tabuns, number 67.

Mr. Peter Tabuns: I move that clause 49(1)(c) of the Capital Investment Plan Act, 1993, as set out in section 3 of schedule 3 to the bill, be amended by striking out “encourages the conservation of water resources” and substituting “supports the achievement of any provincial targets or performance targets established under the Water Opportunities Act, 2010”.

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The intent is to make this a harder, more substantive commitment to conservation and reduction of water consumption.

The Chair (Mr. David Oraziotti): Any further comments? Ms. Jaczek, go ahead.

Ms. Helena Jaczek: We feel the suggested amendment is unnecessary. OCWA is a crown agency and takes its direction from the government, so we feel there is no need to include the proposed language in OCWA’s objects. For instance, if a performance target is set for a municipal service that OCWA operates, like other municipal service providers, OCWA will have to achieve that target. Further, if aspirational targets are set that affect OCWA’s operations under the proposed Water Opportunities Act, like every other crown agency, OCWA will do its part to ensure that the targets are met.

The Chair (Mr. David Oraziotti): NDP motion number 67: All in favour? Opposed? The motion is lost.

NDP motion number 68: Mr. Tabuns.

Mr. Peter Tabuns: I move that clause 49(1)(d) of the Capital Investment Plan Act, 1993, as set out in section 3 of schedule 3 to the bill, be amended by striking out “land use and settlement” at the end and substituting “land use and settlement, while ensuring that municipal official plans are fulfilled with water from conservation”.

Again, we will have increasing difficulty over the next few decades providing ourselves with clean and safe water and we need to start changing our practices now.

The Chair (Mr. David Oraziotti): Ms. Jaczek, go ahead.

Ms. Helena Jaczek: We feel that the suggested language is not clear. The wording in clause 49(1)(d) draws from the language of the existing objects of OCWA that are now contained in the Capital Investment Plan Act. Clause 49(1)(d) is simply a rewrite of the existing language and it provides that OCWA’s activities be carried out in Ontario in a manner that supports provincial policies for land use and settlement. Where those policies

include important interest such as water conservation, they will be captured.

The Chair (Mr. David Oraziotti): Any further comments? NDP motion number 68: All those in favour? Opposed? The motion is lost.

That's it for section 3, schedule 3. All those in favour of schedule 3, section 3, as amended? Carried.

NDP motion number 69: Mr. Tabuns.

Mr. Peter Tabuns: Withdrawn.

The Chair (Mr. David Oraziotti): Okay. Ms. Jaczek, number 70.

Ms. Helena Jaczek: I move that clause 52(c) of the Capital Investment Plan Act, 1993, as set out in subsection 4(1) of schedule 3 to the bill, be amended by striking out "technologies" and substituting "technologies and services".

Similar to the withdrawn NDP motion 69: We want to ensure that we expand the operations related to OCWA, and it's consistent with other amendments that we've proposed.

The Chair (Mr. David Oraziotti): Any further comments? All those in favour of number 70? Opposed? The motion is carried.

Shall schedule 3, section 4, as amended, carry? Carried.

Motion 71: Ms. Jaczek.

Ms. Helena Jaczek: I move that subsection 57.1(3) of the Capital Investment Plan Act, 1993, as set out in section 5 of schedule 3 to the bill, be amended by adding the following clause:

"(h.1) provide for and govern the winding up and dissolution of a subsidiary corporation constituted under subsection (1) and the transfer of its assets, liabilities, rights and obligations;"

By way of explanation, this amendment provides greater legal certainty with respect to the process for winding up and dissolving subsidiaries of the Ontario Clean Water Agency and transferring their assets and liabilities. This amendment provides the Lieutenant Governor in Council with the power to deal with the winding up and dissolution of any subsidiary corporation of OCWA that may be established by regulations under the Capital Investment Plan Act, 1993.

The Chair (Mr. David Oraziotti): Any further comment? All in favour of motion 71? Opposed? It's carried.

Shall schedule 3, section 5, as amended, carry? Carried.

Motion 72: Ms. Jaczek.

Ms. Helena Jaczek: I move that schedule 3 to the bill be amended by adding the following section:

"Bill 65—Not-for-Profit Corporations Act, 2010

"5.1(1) This section applies only if Bill 65 (Not-for-Profit Corporations Act, 2010), introduced on May 12, 2010, receives royal assent.

"(2) References in this section to provisions of Bill 65 are references to those provisions as they were numbered in the first reading version of the bill.

"(3) On the later of the day clause 57.1(3)(c) of the Capital Investment Plan Act, 1993 comes into force and

the day subsection 4(1) of Bill 65 comes into force, clause 57.1(3)(c) of the Capital Investment Plan Act, 1993 is amended by striking out 'Corporations Act' and substituting 'Not-for-Profit Corporations Act, 2010'."

By way of explanation, again, this is ensuring that for any reference to the Corporations Act, we substitute the new Not-for-Profit Corporations Act, 2010, if Bill 65 receives royal assent.

The Chair (Mr. David Oraziotti): Any further comment on 72? All those in favour? Opposed? The motion is carried.

Number 73: Ms. Jaczek.

Ms. Helena Jaczek: I move that section 6 of schedule 3 to the bill be struck out and the following substituted:

"Commencement

"6. This schedule comes into force on the day the Water Opportunities and Water Conservation Act, 2010 receives royal assent."

By way of explanation, this is a technical amendment which provides that the amendments to the Capital Investment Plan Act, 1993, as set out in schedule 3 to Bill 72, come into force on royal assent rather than on a later date to be named by proclamation of the Lieutenant Governor in Council.

The Chair (Mr. David Oraziotti): Any further comments? Government motion 73: Shall it carry? Carried.

Shall schedule 3, section 6, as amended, carry? Carried.

Shall schedule 3, as amended, carry? Carried.

Government motion number 74.

Ms. Helena Jaczek: I move that paragraph 5 of subsection 10(1) of the Green Energy Act, 2009, as set out in subsection 1(2) of schedule 4 to the bill, be amended by striking out "technologies and services" and substituting "technologies, services and practices".

By way of explanation, as we have said previously, we've expanded the scope by including practices. This was an amendment requested by Ecojustice, the Canadian Environmental Law Association and other stakeholders. We feel that this is very useful in terms of expanding the role that we intend in this act.

The Chair (Mr. David Oraziotti): Any further comments on 74? All in favour? Opposed? That's carried.

Shall schedule 4, section 1, as amended, carry? Carried.

There are no amendments in sections 2 or 3 of schedule 4. Shall schedule 4, sections 2 and 3, carry? Carried.

Motion 75.

Ms. Helena Jaczek: I move that section 4 of schedule 4 to the bill be struck out and the following substituted:

"Commencement

"4. This schedule comes into force on the day the Water Opportunities and Water Conservation Act, 2010 receives royal assent."

Again, this is a technical amendment, which provides that the amendments to the Green Energy Act, 2009, come into force on royal assent rather than on a later day to be named by proclamation of the Lieutenant Governor.

The Chair (Mr. David Oraziotti): Any further comment? Government motion 75: All those in favour? Opposed? The motion is carried.

Shall schedule 4, section 4, as amended, carry? Carried.

Shall schedule 4, as amended, carry? Carried.

Schedule 5, sections 1 and 2: There are no amendments. Shall those sections carry? Carried.

Section 3, motion 76: Ms. Jaczek.

Ms. Helena Jaczek: I move that section 3 of schedule 5 to the bill be struck out and the following substituted:

“Commencement

“3. This schedule comes into force on the day the Water Opportunities and Water Conservation Act, 2010 receives royal assent.”

Again, this is a technical amendment allowing the provisions of schedule 5 to Bill 72 to come into force on royal assent rather than on a later day to be named by proclamation of the Lieutenant Governor.

The Chair (Mr. David Oraziotti): Any further comment? Motion 76: All in favour? Opposed? It's carried.

Shall schedule 5, section 3, as amended, carry? Carried.

Shall schedule 5, as amended, carry? Carried.

Before we take a look at the amendment on the preamble, we need to return to sections 1, 2 and 3. Sections 1, 2 and 3: Shall they carry? Carried.

Motion 77: Ms. Jaczek.

Ms. Helena Jaczek: I move that the preamble to the Water Opportunities and Water Conservation Act, 2010 be amended by striking out “technologies and services” at the end of paragraph 4 and substituting “technologies, services and practices”.

Again, to be consistent, and in terms of broadening the purpose of the act, we're adding “practices.”

The Chair (Mr. David Oraziotti): Any further comment to motion 77? All those in favour? Opposed? The motion is carried.

Shall the preamble, as amended, carry? Carried.

Shall the title of the bill carry? Carried.

Shall Bill 72, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? Carried.

Thank you. The committee is adjourned.

The committee adjourned at 1609.

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Monday 22 November 2010

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Standing Committee on General Government

Good Government Act, 2010

Comité permanent des affaires gouvernementales

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENT

Monday 22 November 2010

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Lundi 22 novembre 2010

The committee met at 1402 in room 151.

The Clerk of the Committee (Mr. William Short): Good afternoon, honourable members. It's my duty to call upon you to elect an Acting Chair. Are there any nominations?

Mr. Lou Rinaldi: I would like to nominate Donna Cansfield as Acting Chair.

The Clerk of the Committee (Mr. William Short): Ms. Cansfield, do you accept the nominations?

Mrs. Donna H. Cansfield: I do.

The Clerk of the Committee (Mr. William Short): Any further nominations? Hearing no further nominations, I declare the nominations closed and Ms. Cansfield duly elected as Acting Chair.

SUBCOMMITTEE REPORT

The Acting Chair (Mrs. Donna H. Cansfield): The first item on the agenda is the subcommittee report.

Mr. David Zimmer: Your subcommittee met on Monday, November 15, 2010, to consider the method of proceeding on Bill 110, An Act to promote good government by amending or repealing certain Acts, and recommends the following:

(1) That the committee intends to hold public hearings in Toronto on Monday, November 22, 2010, and Wednesday, November 24, 2010.

(2) That the committee clerk, in consultation with the Chair, post information regarding public hearings on the Ontario parliamentary channel and the committee's website.

(3) That interested parties who wish to be considered to make an oral presentation contact the committee clerk by 12 noon on Thursday, November 18, 2010.

(4) That the committee clerk distribute to each of the subcommittee members a list of all the potential witnesses who have requested to appear before the committee by 1 p.m. on Thursday, November 18, 2010.

(5) That, if all witnesses can be accommodated, the clerk be authorized to commence scheduling of witnesses.

(6) That all witnesses be offered 10 minutes for their presentation, and that witnesses be scheduled in 15-minute intervals to allow for questions from committee members, if necessary.

(7) That the deadline for written submissions be 5 p.m. on Wednesday, November 24, 2010.

(8) That the research officer provides a summary of the presentations on Friday, November 26, 2010, at 10 a.m.

(9) That, for administrative purposes, amendments to the bill be filed with the clerk of the committee by 12 noon on Friday, November 26, 2010.

(10) That the committee meet on Monday, November 29, 2010, for clause-by-clause consideration of the bill.

(11) That the committee clerk, in consultation with the Chair, be authorized prior to the adoption of the report of the subcommittee to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

The Acting Chair (Mrs. Donna H. Cansfield): Thank you, Mr. Zimmer. Any comment, debate? Seeing none, all those in favour? Shall it carry? Carried.

GOOD GOVERNMENT ACT, 2010

LOI DE 2010 SUR LA SAINE
GESTION PUBLIQUE

Consideration of Bill 110, An Act to promote good government by amending or repealing certain Acts /
Projet de loi 110, Loi visant à promouvoir une saine gestion publique en modifiant ou en abrogeant certaines lois.

MS. RINA ANGELSTAND

MR. ADAM BARNARD

MS. GYNEYA DICKS

MR. BILL SEIGFRIED

The Acting Chair (Mrs. Donna H. Cansfield): If I could call the first presenters to the table, please: Rina Angelstand, Adam Barnard, Gyneya Dicks and Bill Seigfried.

Thank you very much for attending the committee. If you could please state your names for Hansard. You have 10 minutes for your presentation and then we have five minutes for questions from the committee.

Mr. Bill Seigfried: Bill Seigfried, representing the hotel employees in Kitchener-Waterloo and Cambridge.

Ms. Gyneya Dicks: Gyneya Dicks, representing the employees in Ottawa.

Mr. Adam Barnard: Adam Barnard, representing the employees in Kitchener-Waterloo-Cambridge.

Ms. Rina Angelstand: Rina Angelstand, representing employees from London, Ontario.

The Acting Chair (Mrs. Donna H. Cansfield): Thank you. Please go ahead.

Ms. Gyneya Dicks: Good afternoon, members of the Legislature, and thank you for the opportunity to appear before you today. We've travelled a long distance to be here, and are from the ridings of Yasir Naqvi, Minister Madeleine Meilleur, Minister Deb Matthews, Minister John Milloy and MPP Elizabeth Witmer, amongst others.

We wish to address our concerns with Bill 110 as they relate to the Alcohol and Gaming Commission of Ontario.

My name is Gyneya Dicks and I am part of the employee "get out the vote" campaign for the upcoming provincial elections in the Ottawa area, as well as an employee in the hospitality sector.

Commencing with the recent municipal elections in Ontario, we jointly organized over 600 employees in one ward to raise awareness of our issues and to effect change whilst bringing focus to our needs, and also as a measure to protect our own livelihoods.

As employees, we represent the most vulnerable group that has faced the consequences of the actions of the AGCO in the past, and we will continue to do so in the future. That is why we urge you as our representatives to take our concerns seriously. Specifically, our concerns stem from the fact that both currently and in this bill there are no provisions that prevent the registrar/CEO from seeking closures of licensee establishments. These closures result in innocent employees, such as us, facing the prospect of scrambling to pay bills and put food on the table. This is the fear that we live with on a day-to-day basis, and the consequences of the actions of a government agency funded by us as hard-working taxpayers, many of whom make minimum wage and work long hours on weekends and late nights when the bureaucrats at the AGCO are enjoying the luxurious benefits afforded under the Ontario public service.

I am not being frivolous. If you look at the salary disclosure list before you, there are over 40 service personnel earning over \$100,000 at the AGCO, whilst the top three personnel—the CEO/registrar, deputy registrar and the director legal—who seek closures jointly earn over \$1 million before indexed pensions kick in. Additionally, they are virtually guaranteed job security. They, it would seem, also make more than the members of your panel who sacrifice your evenings and weekends away from family to represent the hard-working people of Ontario.

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We have asked the owners of our establishments why we have to face this, and it seems that despite having to pay over \$20,000 in legal fees just to defend themselves at a hearing, they are then faced with the limitless taxpayer-funded legal coffers of the AGCO to drag the owners through all levels of court to secure a conviction. The reality is that they are unable to defend themselves as they would go bankrupt doing so. Is it any wonder

why we are made to understand that this commission has had a budget deficit of \$5 million? In this day and age, can any agency leadership be allowed to carry on this way? We question who is watching this agency and our welfare.

Respected members of the panel, moving the appeal process to the licence appeal tribunal will not solve the fundamental problems that plague this agency. The enormous power and ability of the registrar/CEO to seek closure of establishments, throwing mothers, students and employees such as the dishwashers out of work, should be prescribed by the Legislature under the Liquor Licence Act. It cannot and should not be overridden by an opaque and bureaucratic process with no discernable criteria and no temporal limitations. Further, under this bill the government proposes to allow the tribunal the ability to determine all questions of fact or law that arise in matters before it. Is that not compounding the problem even further? Why not allow a review by the courts?

I will ask my colleague Rina to address you now.

Ms. Rina Angelstand: Speaking on behalf of employees, I would like to draw consideration to the types of events that occur in our lives if a licensee was to lose a licence, even just for a small period. I myself have been employed in the hospitality industry for 21 years, and I support my family this way. If I was to lose work due to a licence being pulled for an infraction that may not have occurred under my influence, I would not be able to put food on the table. During the time I would be off of work, I would not be able to afford to secure a position for my children in daycare. The way that daycare works in Ontario, generally, if you cannot secure a position, they do not save a space for you to return. If I was to be off work even as little as two weeks, this could affect my ability to return to work as I'd have to pull my child from the daycare, as I'm not making money and I can't pay for daycare. Then when my position becomes available at work again, there's nowhere for my daughter to go. I'm now a welfare-receiving, stay-at-home mom totally against action of my own and against my will. I also represent other employees who aren't just parents but employees who don't even work next to the alcohol itself; people who work in the kitchen, the dishwashers, students. There are many, many different levels of people who will be and who are strongly affected by these types of decisions.

Mr. Adam Bernard: I'm Adam Bernard. I'm speaking about very similar-type stuff. Just in reference to students, I'm currently a University of Waterloo student working on my undergrad there. As Rina said, pretty much any amount of time off caused by suspension, even if it was no cause of my own, would pretty much make it impossible for me to pay tuition for next term. I earn just enough now to afford what I have allotted for living expenses and my car, living and tuition, so that when my tuition bills came in, I wouldn't be able to pay them, and universities aren't very forgiving as to late payments. You get it in or you get removed from your classes, which is kind of being penalized for something that

has—although I wasn't involved in it, I'm taking the blunt of the blame. I'm a bartender, so although if we were closed—even taking away a liquor licence kind of eliminates my job. I can pour pop but that's about it. Like I said, it's going to pretty much stop me from being able to attend school because of no action of my own.

Mr. Bill Seigfried: I'm Bill Seigfried. I asked that the committee look at the current legislation that gives the AGCO very little choice when dealing with sanctions against licensees other than to suspend the licence. We're here to plead with you to consider monetary penalties versus the licence suspension. Monetary penalties serve the same purpose and send a strong message of deterrence to the licensee while allowing the establishment to continue operating without unjustly punishing the innocent staff members of the establishment, it being extremely difficult at any time, let alone in the current economic conditions, for a licensee to cease operations in a highly competitive market and to again regain momentum upon serving out that suspension. Guests just find another place to go, and we are very unlikely to return to the same revenue levels immediately following a suspension.

It is unjust that other sectors of business in this province do not live under the threat of having their ability to operate suspended when they find themselves accused of being in reproach of regulations within their industry. How many sectors of business under the governance of the province see their ability to operate taken away as frequently as those in our industry?

The Acting Chair (Mrs. Donna H. Cansfield): Excuse me. I just want to let you know that there are a couple of minutes left.

Mr. Bill Seigfried: A 2006 study by the Canadian Tourism Human Resource Council found the following statistics: Food and beverage services employed the youngest labour force, with 48.1% of all employees being between the ages of 15 and 24. Over 60% of those workers were part-time, and a full 28.4% of those workers were pursuing higher education while working part-time in the industry.

By interrupting these businesses and in many cases irreparably damaging their ability to succeed, the sanctions being imposed by the AGCO are causing unjust financial harm to the youngest workers, who, in a vast majority of the cases, were not directly or perhaps even indirectly responsible for the contravention of the act. These workers are working to save for education, rent and the basic necessities of life.

By sanctioning the business and, as an extension, the licensee with monetary penalties, the board can still provide a clear deterrent to those licensees, perhaps even more so than by suspending their licence, without jeopardizing the viability of the business and the welfare of its employees.

Thank you very much.

The Acting Chair (Mrs. Donna H. Cansfield): Thank you very much for your presentation. I will now turn to the opposition for questions or comments. Mr. Clark.

Mr. Steve Clark: I want to thank you very much for your presentation. Certainly, in my first job when I was a student going to the University of Waterloo—although I had another job; I had two jobs at the time. I was a dishwasher-busboy. If I dropped the tray, I'd go back to being a dishwasher; if I was okay, I'd stay as a busboy. So I appreciate the constraints in the business.

I'm interested, Mr. Seigfried, in your comments about monetary penalties. I just wondered if the group here had any idea of a suggested model, whether there was a penalty that you would suggest the committee consider specifically.

Mr. Bill Seigfried: I believe that currently—and Mike Lerner could correct me—there are a certain number of infractions under the Liquor Licence Act where the board may impose monetary fines. However, there are the big five—over-serving, overcrowding—there are a number of infractions where that ability of the board to impose monetary sanctions is not available. The only thing available to them is suspension.

Mr. Steve Clark: Aren't you worried a bit that if there were monetary penalties, they would be done on the backs of the staff; that hours would just get cut back and you'd be in the same boat?

Mr. Bill Seigfried: I think that currently, just to fight an allegation is very costly for the licensees. They can spend upwards of \$20,000, \$50,000 or \$100,000 going through the appeal process, and at the end of the day the AGCO currently has a near 100% conviction rate.

The Acting Chair (Mrs. Donna H. Cansfield): Thank you, Mr. Clark. Mr. Kormos.

Mr. Peter Kormos: Thank you kindly. It's an interesting proposition, and it's not been put to us in a—I appreciate your using this opportunity to make the point but, regrettably, there's nothing in this bill that we can amend. There are no amendments that we could put forward to give effect to any of the concerns you raise. I think you're basically asking for more discretion in terms of the penalties imposed, right?

Mr. Bill Seigfried: Correct.

Mr. Peter Kormos: That's not a difficult proposition.

You should have all applied separately. That way, each one of you would have had 15 minutes. Maybe you wouldn't have been stiffed for time.

Thank you very much for coming. It's an interesting proposition. It will come up during the course of other discussions about legislation that's more on point. Thank you.

The Acting Chair (Mrs. Donna H. Cansfield): Are there any further questions, comments?

Seeing none, thank you very much for your presentation, and thank you for taking the time to come and present to the committee.

Mr. Peter Kormos: Who came from where?

Ms. Rina Angelstand: London, Ontario.

Mr. Adam Barnard: Kitchener.

Ms. Gyneva Dicks: Ottawa.

Mr. Peter Kormos: Even though the subcommittee doesn't discuss it, we arrange for reimbursement for

people who travel from out of town, the same mileage you or I would get if we were travelling in the province of Ontario.

1420

The Acting Chair (Mrs. Donna H. Cansfield): Thank you very much, Mr. Kormos. That has to be discussed at a subcommittee, so we'll put that on the agenda for the next meeting of the subcommittee.

Mr. Peter Kormos: If you people, before you go, would just leave contact information and your mileage, we'll try to get you reimbursed for at least the mileage.

The Acting Chair (Mrs. Donna H. Cansfield): We'll put that on the agenda for the next committee.

Again, thank you very much for your presentation.

MR. MICHAEL LERNER

The Acting Chair (Mrs. Donna H. Cansfield): Our next presenter is Mr. Michael Lerner. Thank you very much for coming to present in front of the committee. You have 10 minutes. Please read your name into Hansard and say where you're from.

Mr. Michael Lerner: Thank you very much. My name is Michael Lerner. I'm from London, Ontario. I just hope that I can express my position as eloquently as the people who preceded me, who are really the troops at ground level and who are most dramatically affected by the legislation as it now stands.

First of all, the legislation that is being considered is a significant improvement from what it was before. The very fact that the adjudicative authority is being taken away from the Alcohol and Gaming Commission and transferred to the Licence Appeal Tribunal addresses one issue that I have been actively involved in over the past several months.

I have a motion pending before the Alcohol and Gaming Commission alleging that there is a reasonable apprehension of bias because of the proximity of the relationship between the adjudicative, the administrative and the enforcement branches. They're all in the same office. They all communicate and socialize together. You can just imagine the chagrin of a licensee who comes before this tribunal and in fact has seen hearings adjourned in mid-afternoon so the adjudicator and the prosecutor can go out fishing, as they did in Thunder Bay a couple of years ago. So we laud this very, very important transfer of the authority to the Licence Appeal Tribunal.

I'm not here on behalf of my client licensees to ask you to water down the legislation. My clients strongly believe in enforcement and believe that the liquor laws in this province ought to be enforced. What we're asking you is not to allow establishments that break the law to get away with it. We're not asking you to weaken the laws as they presently exist. What I'm asking you to do is, as the group before us did, put another bullet in the chamber of the adjudicative tribunal so that it can fine, as well as revoke and suspend licences.

Under the Occupational Health and Safety Act, if an employee is killed on the job site, you don't close down

the construction company. You don't send all the construction workers home and say, "Come on back in 30 or 60 days and we'll let you go back to work." You impose a fine commensurate with the offence that's been committed. In this particular case with the Licence Appeal Tribunal, if it had the ability to fine, it wouldn't be a death sentence for some of these licensees who come before it.

We all know and believe in the principle of progressive discipline. You don't take privileges away from your children right off the bat. You speak to them. You may have them stand in the corner. You may have them write things out one or two times before you get to the ultimate penalty. But in this case, the ultimate penalty is the only penalty available to the tribunal when it hears offences of this nature.

The fact that it puts employees out of work, in my humble opinion, puts the people who can least afford it out of work. These are people who actually work for less than minimum wage because they factor in the fact that they are going to get tips and gratuities. You have students, as the student who sat in this very chair before me. You have single parents. You have people who have established a family business, who have no record.

In fact, if you added up the number of years that the business of one of my clients has been licensed, it's 153 years without a blemish on the record. But for the first offence, he now runs the risk, if the registrar gets his way, of being closed down for 45 days. I suggest to you that it is totally inappropriate, and this has been allowed to exist far too long.

I hope that this committee and subcommittee and the government can pull together from all sides to make sure that the concerns of people such as those who appeared before you, before me, are taken into consideration.

One of the members asked about fines. I believe that a range of fines is what is preferable, so that the tribunal—depending upon the nature of the offence, depending upon the record of the licensee, depending upon all the circumstances—can impose a small fine, a medium fine, or in some cases a heavy fine.

I, for one, believe that you have to keep the suspension and revocation provisions in the legislation, because I believe that there are some cases where you have habitual offenders who ought to lose their licence or ought to be suspended for a period of time—but not somebody who has conducted business and supported the community through charity and community events for a number of years who finds that his licence is suspended and that ultimately could put him out of business. That very situation recently occurred in Leamington, Ontario, where a licensee who had no previous record had his licence suspended for 60 days and he never opened up again. A number of people who worked there were all put out of work.

If we're going to punish, let's punish the offender, not the innocent people who may not even be at work when the offence is committed. That's another point that I wish to bring to your attention.

I don't want to take up all of your time—I know there were others before me—but I believe that this legislation can be significantly improved by giving an authority to the Licence Appeal Tribunal that does not presently rest with the Alcohol and Gaming Commission, and that's the authority to impose a range of fines depending upon all the factors I've suggested that don't presently exist. That will make this better legislation for the licensees and for the employees, and I believe it will make it better for the public too, because you will still recognize the importance of liquor licence regulation and enforcement in the province.

The Acting Chair (Mrs. Donna H. Cansfield): Thank you very much for your excellent presentation. I'll turn to Mr. Kormos now for questions.

Mr. Peter Kormos: How long?

The Acting Chair (Mrs. Donna H. Cansfield): You have about a minute and a half.

Mr. Peter Kormos: Thank you, Mr. Lerner. We don't have the Liquor Licence Act before us, in terms of that statute. Are these minimum sentences—pulling the licence—in the statute or in regulations?

Mr. Michael Lerner: There are provisions in the regulations that I'd love to address with you, but I know that you do not have that authority.

Mr. Peter Kormos: But where is the provision for these minimum sentences of suspension?

Mr. Michael Lerner: It's in the act.

Mr. Peter Kormos: Okay. So what you'd basically be looking for is somebody to come forward—even a private member's bill—addressing that and deciding the range of sentences.

Mr. Michael Lerner: Absolutely.

Mr. Peter Kormos: Of course, the other problem that servers have is bosses who take part or all of their tips, which Michael Prue's bill from the NDP is addressing: trying to outlaw the practice of owners of establishments, restaurants and taverns taking part or all of servers' tips. That has nothing to do with this—

Mr. Michael Lerner: Mr. Kormos, what you've just said is foreign to me. None of my clients are involved in that practice.

Mr. Peter Kormos: I'm sure they're not. I was a lawyer, too; I only had innocent clients, as well.

Thank you very much. That was totally irrelevant, but I just wanted to throw that out there and tout Michael Prue's bill.

Mr. Michael Lerner: I have left with the clerk 20 copies of my submission in writing for you to consider.

Mr. Peter Kormos: We've got it. Thank you kindly, sir.

The Acting Chair (Mrs. Donna H. Cansfield): Mr. Ramal?

Mr. Khalil Ramal: Thank you very much for coming and appearing before our committee and explaining to us the details, from experience, of course. You have a lot of clients, I guess, in London and across the province of Ontario. You've dealt with so many issues, especially people losing their licences.

I heard you talking about the licence that goes to the appeal tribunal. Is that—

Mr. Michael Lerner: Well, the practice usually is, licence inspectors—who are really supervised by the OPP—will go into a licensed establishment and see an infraction. Depending upon the severity of the infraction, they will either issue a notice that is subject to a fine or they could send a report on to the registrar and the registrar then issues what is known as a notice of proposal and the proposal is either one of suspension or revocation. On those issues, when they come before the tribunal, the tribunal has no discretion except to impose the death penalty—a suspension or a revocation—or do nothing. That's the process that you follow as you go up. The proposal initially comes from the registrar, and then it's up to the licensee to determine the manner in which the licensee will oppose the recommendation of the registrar to suspend or revoke.

Mr. Khalil Ramal: Who designed the threshold and designed the criteria for you to pull the licence or keep it? The inspector, in conjunction with—

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Mr. Michael Lerner: No. Actually, the decision made as to the nature of the penalty to be imposed and whether a notice of proposal is to be issued is made by the registrar or deputy registrar on the recommendation of the director of legal services, who is also within the branch of the Alcohol and Gaming Commission.

Mr. Khalil Ramal: Thank you very much.

The Acting Chair (Mrs. Donna H. Cansfield): Are there any further questions? Mr. Chudleigh.

Mr. Ted Chudleigh: It sounds as though the Alcohol and Gaming Commission has a rather cozy relationship with the prosecutors, where all this takes place. Do you have any recommendations as to where those responsibilities might better lie?

Mr. Michael Lerner: Well, one of the things that I would recommend—in the past, the chair of the Alcohol and Gaming Commission has also been the CEO of the commission. For reasons that escape me at this time, the registrar is also now the CEO. So the registrar literally reports to himself and then the CEO reports to the chair. If you could do one thing that would really address this issue, it would be to separate the registrar's position from that of the CEO. One suggestion would be to give it back to the chair of the Alcohol and Gaming Commission, because it seems more compatible than to have that authority rest in the person who is directly involved and, in fact, quarterbacking the enforcement branch of the legislation.

The Acting Chair (Mrs. Donna H. Cansfield): Thank you very much, Mr. Lerner, for your presentation and for taking the time to come and present to the committee.

CANADIAN PARENTS
FOR FRENCH (ONTARIO)

The Acting Chair (Mrs. Donna H. Cansfield): Our next presentation is the Canadian Parents for French

(Ontario): Heather Stauble and Betty Gormley. Thank you very much for taking the time to come and present to the committee. Could you please state your name and where you're from for Hansard?

Ms. Heather Stauble: My name is Heather Stauble. I am the president of Canadian Parents for French (Ontario), and I'm from Peterborough.

Ms Betty Gormley: My name is Betty Gormley. I'm the executive director of Canadian Parents for French (Ontario), and I'm from Mississauga.

Ms. Mary Cruden: And I'm Mary Cruden. I'm vice-president of the Canadian Parents for French (Ontario), and I'm from Toronto.

The Acting Chair (Mrs. Donna H. Cansfield): Thank you very much. You have 10 minutes for your presentation.

Ms. Heather Stauble: First of all, thank you very much for allowing us to present. I'm here today to address the proposed amendments to the Education Act that are contained in Bill 110.

Canadian Parents for French is a national network of volunteers. Our organization was formed in 1977 with the support of Canada's first official languages commissioner, Keith Spicer. Our national partners include the Commissioner of Official Languages, the Canadian Association of Immersion Teachers, the Canadian Association of Second Language Teachers, La Commission nationale des parents francophones, French for the Future, and the University of Ottawa. Our provincial partners include the Ontario Modern Languages Teachers' Association, TVO and TFO, Glendon College, and le Centre Francophone de Toronto. We are funded through the Department of Canadian Heritage, donations and memberships.

CPF has a branch and active members in every province and territory. In Ontario, we have 34 local chapters and affiliates and 5,300 active engaged members. At the local level, we distribute information about French second-language programs; work to support the programs and implement them; and sponsor and organize extra-curricular activities in French for students, including information nights, camps and annual French public-speaking contests. At our Ontario branch office, we field thousands of emails and calls from parents, teachers and administrators seeking assistance and information about French programs in Ontario. We provide information about all four boards: French and English, Catholic and public. We sit on the working group of the Ministers of Education and Training, Colleges and Universities on the continuum of French-language learning, or le Groupe de travail permanent EDU-FCU sur le continuum de l'apprentissage en langue française, and have just joined the Minister of Education's early learning implementation advisory committee.

The most recent provincial enrolment figures in education in round numbers for JK to 12 show a total of 1.9 million in the English boards and a total of 91,000 in the French boards. In the English boards, we have 803,000 in core French, 31,000 in extended French, and

137,000 in immersion. Some 27% of our immersion students and 5% of our core French students graduate. These numbers would be much higher if there were more secondary courses and opportunities available. Provincial participation rates put Ontario ninth among the provinces in Canada.

Parents consider this to be a very important skill. Support for bilingualism has risen over the last number of years, and despite declining enrolment, we see an increase in French immersion enrolment annually.

According to Decima, CROP, Ipsos-Reid and Canadian Heritage reports, support for official bilingualism and the opportunity to learn French as a second language ranges between 66% and 80% across the country. Our Canada-Ontario agreement reflects this, but our actions don't. The goals for transparency and accountability are equally impressive, but we still have no reporting requirements for school boards and expenditures for their FSL grants.

In terms of instructional time in French, we have boards such as Bluewater, Trillium Lakelands, Ottawa-Carleton and Toronto Catholic and public that have adopted best practices in immersion that far surpass the ministry guidelines of 50% instruction in French in elementary, and that front-end load the program, a proven design with volumes of research to show that it produces excellent outcomes.

The excellence that we see in these boards has come from parent advocacy and supportive teachers, administrators and trustees. Provincial policies and regulations have allowed excellence, but they have not fostered it.

We're here today to share our concerns about the proposed amendments to the Education Act contained in Bill 110. The current Education Act gives permission for English school boards to provide instruction in French. The amendments state that the minister may put terms and conditions on that permission. The genesis of these amendments has been characterized as good house-keeping and as an opportunity to address concerns raised by the French first-language boards. However, this amendment does nothing to improve access, participation and outcomes in FSL programs—the stated goals of the Ontario-Canada agreement, and may in fact make our current situation worse. It restates the minister's existing power to set curriculum and language of instruction in JK, all grades and the extended day, while it singles out FSL programs with the very negative and worrisome phrase “terms and conditions.”

Learning French as a second language to become bilingual is a very big challenge in our predominantly English province. Canadian Parents for French continually advocates for program improvements and to save programs across this province. Just last week, we were dealing an effort by the Lambton Kent District School Board to close four French immersion programs without consulting parents, and with very questionable data. Any move on the provincial government's part, be it a regulation, direction or a single word change in a policy or legislation, is parsed by the many decision makers we talk to who support bilingualism in theory, but who in

practice erect barriers for parents who want quality, accessible FSL programming.

FSL programs are under constant threat of review, which we know is code for fewer programs and more local restrictions on access. In our collective years of experience, we have learned that one major factor is holding us back from producing more bilingual graduates, and that is messaging from the province that is tepid in its support for growth and quality of FSL programs. Adding the phrase “terms and conditions” for FSL and only FSL sends another message that the province tolerates but does not really embrace or support the concept of immersion or bilingualism.

Presque tous les conseils et les écoles de la province sont confrontés aux décisions difficiles causées par les déclin d'inscription. Nous appuyons les efforts des conseils scolaires francophones qui visent à protéger non seulement la langue française mais aussi la culture francophone. Néanmoins, il est important de noter que la grande majorité des étudiants qui fréquentent les programmes de français langue seconde n'ont pas le droit de s'inscrire dans les écoles françaises langue première et que l'immersion française est conçue pour les étudiants et leurs parents qui ne savent pas le français.

Almost every board and school in the province is facing the hard decisions around declining enrolment, and we wholeheartedly support the French-language boards that are guarding not only language opportunities but also their culture. However, we must bear in mind that the vast majority of students who access FSL programs are not eligible to attend French first-language schools and that French immersion is designed for students and parents who do not know French.

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If the province and the members of provincial Parliament were to take up the challenge and make FSL policy that removes barriers and raises the bar by identifying and replicating existing best practices in immersion, then the parents and students of Ontario would be well served. But our experience, after 40 years of French immersion, is that in Ontario, any negative message from the province will trigger more reviews and restrictions on access.

We know that while some boards will have the good sense to expose as many children as possible to the benefits of learning French in the extended day, we also know that producing bilingual graduates, in the words of the Canada-Ontario agreement signed by this government, is to “acknowledge the importance of learning Canada’s second official language ... to promote this learning as part of second official language programs ... and to provide opportunities....” We need to keep the messaging positive.

Accordingly, we ask that the proposed amendments to section 8, paragraphs 25 and 25.1, of the Education Act reading “may impose terms and conditions on the permission” be removed from Bill 110.

The Acting Chair (Mrs. Donna H. Cansfield): Thank you very much for your presentation. I turn to the official opposition. Mr. Chudleigh.

Mr. Steve Clark: I’ll go ahead.

The Acting Chair (Mrs. Donna H. Cansfield): Mr. Clark.

Mr. Steve Clark: Thanks, Madam Chair. Je m’excuse, mais je parle français comme une vache espagnole. For those who don’t know, it means that I speak French like a Spanish cow.

You talk about the fact that terms and conditions are sort of a negative code word, I guess, in your group’s mind and that it will result in boards reviewing and restricting the program. I’d be interested to hear—because as you mentioned earlier on, the government talked about this being good housekeeping, rather than good government, or maybe I’m just embellishing it a bit. I’d be interested to hear what the ministry has told you in terms of what they feel the restrictions or the terms and conditions would result in.

Ms. Heather Stauble: They presented it to us as good housekeeping. We also noted, through the Hansard, that it was a concern of the French first-language boards.

After many years of experience in advocating for these programs, and ongoing reviews at the local level, we have seen how the messaging has a ripple effect down through the boards. We have constant reviews coming up. Some of the more well-known ones would be the Lambton-Kent one that happened over the last couple of weeks, and the Halton board last year. Guelph just went through a review. It’s an ongoing thing. Any negative messaging ends up being used as a back door to place restrictions.

Mr. Steve Clark: Thank you.

The Acting Chair (Mrs. Donna H. Cansfield): Thank you very much. Mr. Kormos.

Mr. Peter Kormos: Give us an example of a term or a condition that you might anticipate that causes you this apprehension.

Ms. Heather Stauble: Just the phrase “may impose terms or conditions”—

Mr. Peter Kormos: Okay.

Ms. Heather Stauble: An example of one little word that causes us a constant nightmare is the word “may” in the Education Act when it refers to transportation, that they “may” provide transportation. That’s more often used as “may not.”

Mr. Peter Kormos: I’m familiar with “may,” but give us an example of a term or condition that would be detrimental that you would reasonably anticipate.

Ms. Heather Stauble: There are a number of volunteers who work on programs such as French clubs and summer camps. One of the examples that was presented to us in these discussions was that there might be some limits on programs that were not held in French immersion schools—a camp or a French after-school club—and we see those as opportunities to encourage kids to stay in French programs.

Mr. Peter Kormos: And the term or condition would undermine—

Ms. Heather Stauble: It would undermine, yes.

Mr. Peter Kormos: —the French language. Okay, that's fair. That's what I wanted to hear, this sort of example. Okay, good. Thank you.

The Acting Chair (Mrs. Donna H. Cansfield): Thank you very much, Mr. Kormos. Mr. Ramal.

M. Khalil Ramal: Thank you. Merci beaucoup pour votre présentation.

Je pense que passer ce projet de loi ne va pas changer la méthode et les relations avec les francophones ontariens. Vous savez que notre gouvernement et notre ministre de l'Éducation travaillent ensemble avec la communauté francophone de l'Ontario pour établir des mécanismes spéciaux pour supporter tous les francophones de l'Ontario. Pensez-vous que passer cette loi va changer la méthode et les relations?

Ms. Heather Stauble: Well, we understand that there are concerns within the French first-language community. Betty, do you want to respond to that more directly?

Ms. Betty Gormley: Go ahead.

Ms. Heather Stauble: Actually we sympathize with those concerns, but we also feel it's important, if we're talking about working together, that we use language and policies and legislation that create opportunities and improve access and don't in any way restrict the growth of any of these programs.

It wasn't very long ago—I think it was 50 years ago—that we weren't allowing French to be taught in schools. Here we are advocating for more opportunities, which is a nice turnaround. We don't want to see any kind of restrictions in any way, shape or form placed on the desire of students, teachers or administrators to offer those programs. The reality is that when there are some negative words in there, that's what ends up happening.

M. Khalil Ramal: Donc, vous pensez que passer ce projet de loi va changer les relations entre vous et les francophones?

Ms. Heather Stauble: I think that there is concern amongst the francophone community that they're losing students to the English boards and that the all-day, every day kindergarten or the full-day kindergarten model will increase the number of students they lose to the English boards, particularly in immersion programs, but the reality is there are not that many students who are in immersion or going to go into immersion who would otherwise go into the French first-language programs. There are a variety of reasons, but at this point we don't see that there are that many students that really applies to. I do think it will put a wedge between the communities, and that's not a good thing.

Long term, the plan for the French first-language community is to have a model where there are a lot of opportunities available at the post-secondary level, and it's important, in order for that to be fulfilled, that there be very strong enrolment in the elementary level in both the French second-language programs—particularly immersion—and the French first-language programs, because otherwise you don't have enough graduates at the end to support those post-secondary opportunities.

Mr. Khalil Ramal: So you think—

The Acting Chair (Mrs. Donna H. Cansfield): Thank you, Mr. Ramal. I'm sorry; we've run out of time. I appreciate you taking the time to come and present to the committee. Thank you very much.

ONTARIO RESTAURANT HOTEL AND MOTEL ASSOCIATION

The Acting Chair (Mrs. Donna H. Cansfield): Our next presenter is Tony Elenis from the Ontario Restaurant Hotel and Motel Association and Michelle Saunders. Thank you very much for coming to the committee. Would you please state your name and where you're from for Hansard, and you have 10 minutes for your presentation.

Mr. Tony Elenis: Tony Elenis from the Mississauga area. Good afternoon. I'm the president and CEO of the Ontario Restaurant Hotel and Motel Association, the ORHMA. I'm joined today by my colleague Michelle Saunders.

The Ontario Restaurant Hotel and Motel Association is a not-for-profit industry association that represents the foodservice and accommodation industries in Ontario. The ORHMA is the largest provincial hospitality industry association in Canada, representing more than 11,000 business units throughout the hotel and restaurant industry. Our membership is representative of Ontario's hospitality and tourism industry, which is comprised of more than 3,000 accommodation properties and 22,000 foodservice establishments, over 17,000 of which are licensed to serve alcohol.

It is my pleasure to have the opportunity to speak to you this afternoon regarding Bill 110, the Good Government Act. Specifically, I would like to address schedule 1 of the bill and even more specifically the proposed changes to the Liquor Licence Act and the Licence Appeal Tribunal Act.

These provisions collectively remove the adjudicative function of the Alcohol and Gaming Commission of Ontario's board of directors and transfers the responsibility for hearings related to Liquor Licence Act infractions and appeals of monetary penalties to the Licence Appeal Tribunal.

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First, let me say that the ORHMA has long called for this move, and we applaud it. The separation of roles is a starting point to creating confidence in the accountability and fairness of hearings for Ontario's bar and restaurant owners and removing an inherent bias and conflict in the AGCO board.

For as long as the AGCO has existed, Ontario's liquor licensees have raised alarm bells about the current multi-function structure of the Alcohol and Gaming Commission of Ontario, which ultimately plays judge, jury and executioner from a licensee perspective. Not only does the AGCO have a say in what public policy should be, but they interpret it, enforce it and then rule on it. On one hand, a board ruling in favour of a licensee ultimately can be seen as a decision against the board's

own staff and the registrar. On the other hand, most licensees would tell you a ruling in their favour is at best a rarity.

A governance review of the AGCO undertaken in 2009 for the Ministry of Consumer Services stated, "In its adjudication role, the board often makes decisions that are in conflict with the registrar, but in its governance role the board is also responsible for the impartial oversight of the CEO." The transfer of hearings from the AGCO to the Licence Appeal Tribunal is a positive step to address this conflict and bias. However, the government must not overestimate this measure as one that will resolve licensee concerns.

While the issue of board governance bias and partiality is addressed by the measures proposed in Bill 110, we must work together to ensure that this is a step forward and not merely a step sideways. Licensees have real concerns about the powers of the AGCO registrar, such as to determine monetary penalties or to determine conditions on a licence without a hearing. While the Liquor Licence Act sets out the powers of the registrar, the AGCO itself often has the authority to develop the policies. From a licensee perspective, this is troubling.

Underlying concerns such as these, although certainly not limited to these examples, must also be addressed by the government in order to ensure fairness and transparency in the system. Bill 110 proposes transferring hearings to the Licence Appeal Tribunal, but does not address the underlying concerns with the hearing process, such as burden of proof and entry of evidence.

Furthermore, licensees are deeply concerned with the transparency and accountability of AGCO inspections on two levels, one being the very nature and consistency of inspections. The ORHMA recommends these be addressed through the development of a code of conduct, with a focus on recruitment, a standardized training program for all AGCO inspectors, and ensuring that all interpretive or inspection guidance documents produced to assist inspectors in their work be made public. Importantly, regular follow-up meetings must be established between the hospitality industry and the inspections department to iron out concerns and enhance communication. This ensures all sides are playing on an equal field.

The other concern is related to the very rules that are being upheld. As a prime example, ORHMA members are deeply distressed with a provision of the Liquor Licence Act that prohibits a licensee from permitting drunkenness. There is, however, no definition of drunkenness, and the government and courts have all struggled with this point. Although we have a firm blood alcohol content—BAC—level that determines when one can operate a vehicle, we do not have a BAC that determines when one is drunk. Even with training to assist employees in identifying signs of intoxication, bar and restaurant owners have no control over the actions of patrons prior to entering their establishment, and even if one can determine a point of drunkenness, it cannot be identified prior to its occurrence. This is a very complex

discussion, one that the courts have struggled to address. It is outside the mandate of this committee to consider or to address, but it's an example of the struggles and challenges the industry faces and should assist you in understanding why the changes proposed are but a starting point.

As for the composition of the Licence Appeal Tribunal, the ORHMA would call on the government to ensure that there are persons appointed to the tribunal who have had management and/or ownership experience in the bar and restaurant industry. Operators need assurance that there is expertise on the tribunal that understands the realities of their operations. We have long called for this measure at the AGCO board and will extend this ask to the LAT.

The transfer of licensing hearings from the AGCO to the LAT is a positive step, but only one step to improving accountability throughout the entire beverage, alcohol and liquor licensing system.

Lastly, the ORHMA calls on the government to recognize Ontario's hard-working bar and restaurant owners as valued partners in the system, and to ensure that the industry is consulted throughout this entire transition process.

Thank you for your time.

The Acting Chair (Mrs. Donna H. Cansfield):

Thank you very much for your presentation. I'll turn to Mr. Zimmer.

Mr. David Zimmer: Thank you very much for your presentation. I think we have written copies—yes. We'll reflect further on the submissions that you've made.

The Acting Chair (Mrs. Donna H. Cansfield): Mr. Chudleigh.

Mr. Ted Chudleigh: I would just like to thank you for coming. In your experience with the other provinces in Canada, are you familiar with any other provinces that have a system that, in your opinion, would be more fair and would perhaps work better than the system we currently have in Ontario?

Mr. Tony Elenis: In consulting with my colleagues in the other provinces, we seem to be having much more conflict in Ontario than the other provinces. And that's also talking to operators who own multi-units throughout the provinces.

Mr. Ted Chudleigh: So Ontario is dead last of the 10 provinces?

Mr. Tony Elenis: More or less, yes. More on the bottom of the list, I guess.

Mr. Ted Chudleigh: Which province seems to have a system that protects the licensee but also protects the public, in other words, has a balance between the two groups of people?

Mr. Tony Elenis: That's probably a question that needs a little bit more technical research, but Alberta stands out in conversations, I've found.

Mr. Ted Chudleigh: Good. Thank you very much.

The Acting Chair (Mrs. Donna H. Cansfield): Thank you very much for your presentation. We ap-

preciate you taking the time to come and speak to the committee.

ONTARIO RESTAURANT AND BAR ASSOCIATION

The Acting Chair (Mrs. Donna H. Cansfield): Our next presenter is the Ontario Restaurant and Bar Association: Mike Smith, chair; Alex Munro, director; John Couse, member; Dale Hill, member; and Binny Kuriakose, member.

Thank you very much for taking the time to come and present to the committee. If I could ask you to please identify yourself and where you're from for Hansard, and then you have 10 minutes for your presentation.

Mr. John Couse: Good afternoon, ladies and gentlemen. There's one small correction. My name is John Couse and I am in fact the chair of the Ontario Restaurant and Bar Association.

I'd just let you know that we are a newly formed hospitality industry association dedicated to synchronizing the objectives of our industry-regulating bodies, the business interests of the members, and most importantly, to improve the working conditions of the employees who we very highly value.

I would like to say at the outset that, on the subject of the AGCO, we are not advocating deregulation of the hospitality industry. Rather, we are advocating the re-regulation of the industry. We are seeking regulations that are more sensitive to the industry than we currently experience. We believe that the AGCO's mission statement and objectives are valid, and we support them. However, we believe that significant improvements can be made in the policies and practices of the AGCO in meeting their goals, and we would like to help.

For example, all of our members subscribe to a designated driver program whereby we offer free non-alcoholic beverages to those who are designated drivers. We are aiming to help reduce the incidents of drinking and driving. We believe that this should be turned into a province-wide initiative led by the AGCO.

Specifically with regard to Bill 110, we are here to ask you three things: First, that the proposed separation of the adjudication function of the AGCO to the licensing tribunal be carried through; second, that the licensing tribunal be given the authority to levy fines in place of suspensions; and third, that the roles of the CEO and registrar be held by two people instead of the current one person.

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My colleagues and I will be speaking to you today to give you the background picture as to why we are seeking these changes. I'll turn this over to Alex.

Mr. Alex Munro: Hi there, members of the committee. My name is Alex Munro. I'm the vice-president of business operations and development for an Irish pub company in Ottawa. We have five locations, 440 staff, and that contributes to \$5.4 million in the local economy

in salaries and wages. As well, we pay approximately \$120,000 a month in PST.

We have looked at the contents of the bill regarding the separation of the adjudication powers and the governance role and commend the government for initiating change. However, we are convinced that it is deficient in significant areas. We're specifically requesting the enhancement of the bill to include separation of the roles of the registrar and the CEO of the commission in line with greater accountability, monitoring of the Alcohol and Gaming Commission of Ontario and governance of the commission.

Here's the current situation, its potential impacts on the industry and fallout on employees. As it currently stands, the board overseeing governance of the AGCO and hearing adjudications of licensees are one and the same. To ensure separation of functions in line with principles of natural justice, they're proposing to move adjudication over to the Licence Appeal Tribunal in this bill. However, under the current structure, the CEO of the commission is also the registrar, the person who issues our licences, hires inspectors, decides how enforcement is carried out, determines if a licensee has committed a violation, and then decides how many days an establishment can be shut and its workers unemployed.

It is akin to the situation of a judge at the Divisional Court level deciding if you can have a business licence, hiring the police officers, directing enforcement, determining once a report comes in if there was an offence, then imposing a penalty and then appearing before the appeal court to seek that penalty if it is challenged, all the while acting in a dual role as police chief responsible for the operations of the entire court system.

Herein lies the problem that our industry has felt and tried to address for over a year and a half. This type of absolute control imparts a real fear in the licensees, and there have been widespread reports of extreme dissatisfaction and reports of abuse of authority in the—

The Acting Chair (Mrs. Donna H. Cansfield): Excuse me, sir. If I could ask if you could just step back a little bit back from the microphone. There's a little bit of feedback coming through. I appreciate that.

Mr. Alex Munro: Sure. Is that better?

The Acting Chair (Mrs. Donna H. Cansfield): Thank you.

Mr. Alex Munro: All right.

This type of absolute control imparts a real fear in the licensees, and there have been widespread reports of extreme dissatisfaction and reports of abuse of authority in the conduct of inspectors operating under the supervision of the registrar and CEO.

Tabled before you are letters from the mayor of Markham and federal member of Parliament Bryon Wilfert that give you a glimpse into our concerns. The government has already recognized that there should be a separation of powers at the commissioners' level, but because of the apprehension of bias and lack of effective governance, it should go further and eliminate the root cause of it.

We ask how you can allow such a situation to prevail in Ontario when a separation of powers is fundamental to maintaining trust and integrity of the judicial or adjudicative system you oversee as legislators.

Mr. Dale Hill: Hi. My name's Dale Hill, and I'm a partner at Gowling Lafleur Henderson law firm.

About five years ago, I naively thought I was going to open up a well-run establishment in Ontario. I'm originally from Halifax, Nova Scotia, and was brought to an opportunity to open up a Maritime-type establishment. To my chagrin, I learned how the AGCO has worked over the last four years.

I've been given a statement to talk about here, and it talks about the government's review of what's actually happened with the AGCO. But I'd like to take a second out of this presentation just to put a real-life situation on the table so that you'll understand the gravity of the situation that owners face today and why this is a priority.

Just to give you a flavour, within the first six months of me opening up this Maritime bar, I was charged with permitting an intoxicated individual into the premises. I was charged for allowing illegal alcohol into the premises. Six months later, after these supposed incidents occurred, I was notified of it. So after the investigation—and these facts are not in dispute; they're agreed by both the AGCO and myself. The permitting an intoxicated person on to the premises, keep in mind, was by a doorman who is fully trained, Smart Serve—all my staff have followed every legislative guideline for a person working in the industry. My doorman at the front door saw an individual in the snowbank, not well dressed, who had had too much to drink, and not even from my establishment. The doorman went outside his job, brought this individual in from the street, sat her in the front lobby, got her a glass of water and had her boyfriend come pick her up. The liquor inspector—no dispute of the facts—charged us for allowing an intoxicated person on the premises. I'm not sure if that makes any sense at this current stage. These charges come across as very hard.

The second charge was allowing illegal alcohol on the premises. On the way to a Senators hockey game, four kids snuck in four cans of beer in their backpack and hid it in a corner. Our manager, as soon as they were notified, found those individuals and asked them to leave the premises. The liquor inspector noticed that and charged us for allowing illegal alcohol on the premises.

As naive as I was at the time, I said, "Well, there's an independent review. I'm going to go to this panel, where they're actually going to hear these facts. It makes sense. That's the right and moral thing to do." So I present to the committee, and the committee says, "You still violated the law. You allowed an intoxicated person on the premises." I said, "However, the individual wasn't even drinking in my establishment. It was freezing cold outside and she wasn't dressed properly. All we did was assist." They asked for a 21-day suspension. So I said, "Well, that's just crazy." I mean, it makes sense that I—well, then I went to the court. I went before Mr. Cunningham. Chief Justice Cunningham looked at the prosecutor

and basically, short form, said, "Are you kidding me? You want to shut down an establishment for 21 days for doing what any normal human being would do?" The prosecutor said, "Your Honour, that's the law."

The Acting Chair (Mrs. Donna H. Cansfield): You have two minutes left.

Mr. Dale Hill: Okay.

Go forward: Judge Cunningham threw out the charges. The AGCO spent taxpayers' money and appealed the decision, went to the next level, and that's where I stopped spending the money. I stopped spending it at that point in time—I said I'm \$30,000 in debt and all I'm doing is trying to protect those individuals you heard from an hour ago to keep their jobs. So I didn't send anybody to the appeal courts, and they granted a 14-day suspension, and those people were out of work for 14 days.

Why is this a priority today? The priority today is to try to put some common sense into the system, to have an independent person review these situations, because any normal human being would look at it as that's the right thing to do, understanding how the law is read.

Without further ado, just to give you an idea, this has all been reviewed by a governance review. They've come out with a statement. This is a statement on the governance review of the AGCO:

"Our work has shown that the board is unable to fully discharge its responsibilities in strategy, operational oversight, CEO evaluation and succession, reviewing and approving policy, and in many cases feels it has no authority to undertake these roles. There is a significant diversity of opinion, for example, as to what role directors play with respect to the CEO succession process. Similarly, the board feels that it is not involved at all in the strategic direction of the AGCO. The adjudication bias combined with the conflict between the adjudication and oversight roles help to explain this gap."

What I've put forward today is that we need to separate those individuals, so somewhere during the process we say, "This is crazy, to waste taxpayers' money. It is crazy for Dale Hill to continue to fight for 50 employees to stay working for 21 days." Forget—

The Acting Chair (Mrs. Donna H. Cansfield): Thank you very much, Mr. Hill. I appreciate your presentation.

I turn to Mr. Chudleigh or Mr. Clark. Any questions?

Mr. Steve Clark: First of all, I want to take this opportunity to thank you for coming to the committee with your stories, your—

Interjection.

The Acting Chair (Mrs. Donna H. Cansfield): I'm sorry, sir; the 10 minutes were used.

1510

Mr. Steve Clark: I just want to take this opportunity to thank the four of you—

The Acting Chair (Mrs. Donna H. Cansfield): Excuse me. If you'd like to forgo your question, then the gentleman could have a few minutes to speak.

Mr. Steve Clark: Absolutely. Go ahead.

The Acting Chair (Mrs. Donna H. Cansfield): Go ahead, sir.

Mr. Mike Smith: Thank you very much. My name is Mike Smith. I currently own and operate five licensed restaurants in London and one in Michigan. These establishments have operated for a collective amount of 102 years. It has generally been an enjoyable experience, except for the last few years. During those years, I, along with hundreds of operators, have felt an incredible amount of anxiety-laden pressure from the AGCO.

For my first 25 years in business, we had an excellent working relationship with Alcohol and Gaming. However, something in the last few has gone drastically wrong. We continue to have excellent relationships with the police, fire, health and building departments, so what went wrong with the AGCO? Those other regulatory bodies continue to work with us to improve our operations by suggesting improvements and working with us. However, the AGCO has switched from a "let's work together" approach to a "gotcha" mentality.

Almost all of the operators that I talk to from across the province don't feel this is being driven by the local inspectors or local offices. They feel it is coming from the top down. Most every licensee wants rules and regulations to protect good operators from the less honourable ones. We want to work with the AGCO to make our operations the best they can be. What we don't want is to be afraid of them, and that is the way we feel right now.

Other authority figures feel much the same as the operators and employees feel. As a matter of fact, a very senior police officer of a large and respected police force, in a recent affidavit, said, "I will conclude by saying that I personally would not work with Inspector X due to his aggressive nature and the disturbing thought of him spreading false and damning statements about me personally and professionally." Please believe me: This is not an isolated incident.

The other big issue that licensees and employees have is the right to a fair trial. I have looked far and wide across Ontario and have yet to find a business that has won its case against the AGCO once they have been charged. An operator knows that if charged, they are going to be convicted and closed. When the people at the AGCO who charge, prosecute and convict licensees have adjacent offices and quite often travel to trials in the same vehicle, it's very easy to see why no licensee wins their case. What we desire is the right to go before a real court with an unbiased judge, not the kangaroo court we now face.

A very important argument put forward by the employees—and I know that most operators agree—is, why should all the employees lose their jobs for the length of a suspension when a legitimate charge is the fault of one or two individuals?

Licensees across the province give approximately 32% of their sales—that's sales, not profits—to three levels of government. Unlike the officials who govern them, most do not have pension plans, dental plans or drug plans. I have almost 300 employees, and I don't even have those benefits myself.

It would be instructive for you to hear the following words and views of the respected Associate Chief Justice Cunningham of the Ontario Superior Court on the issue of a particular closure: "In our view on these facts, a 14-day suspension is tantamount to a financial penalty out of proportion to the circumstances and is therefore a reversible error."

The Acting Chair (Mrs. Donna H. Cansfield): Thank you very much. I appreciate that you've had an opportunity to speak, and I thank the member for giving up his question time.

Mr. Kormos, do you have a question?

Mr. Peter Kormos: No. My apologies; I had to step out. But I understand the issue; it's been raised several times already today.

It seems to me that your industry should pursue this in a more aggressive way, directly with the minister and the parliamentary assistant—but then again, there's an election in 11 months' time. Maybe you want to wait.

The Acting Chair (Mrs. Donna H. Cansfield): Are there any questions, Mr. Zimmer?

Mr. David Zimmer: No, but if we have any time, I'll yield it to the speaker, at your discretion, Chair.

The Acting Chair (Mrs. Donna H. Cansfield): Yes, certainly. A minute or so, sir—you may finish your presentation. And if you do not have the time to finish, could we please have a copy of your presentation for the committee members?

Mr. Mike Smith: Certainly. I just had one paragraph left.

The Acting Chair (Mrs. Donna H. Cansfield): Then go ahead.

Mr. Mike Smith: First of all, please work to ensure that there are watertight checks and balances on the AGCO and that there's a proactive and co-operative working relationship with licensees.

Secondly, when a licensee is charged, please offer them a chance to a fair trial with an objective judge hearing the case. Allowing a tribunal to determine questions of law and facts in this bill is a deeply troubling concept and does not have our support.

The Acting Chair (Mrs. Donna H. Cansfield): Thank you very much for your presentation. It was very insightful. If you do have copies, we would welcome a copy of your presentation for the committee members as well.

Thank you again for taking the time. We will make those adjustments to the list for Hansard.

FRENCH AS A SECOND LANGUAGE ADVISORY COMMITTEE OF THE TORONTO DISTRICT SCHOOL BOARD

The Acting Chair (Mrs. Donna H. Cansfield): Our next presenters are from the French as a Second Language Advisory Committee of the Toronto District School Board: Hagit Fry and Julian Heller. Thank you very much for coming to the committee. Please identify

yourselves and where you're from. You have 10 minutes for your presentation.

Mr. Julian Heller: My name is Julian Heller, and this is Hagit Fry. We are parents here on behalf of the French as a Second Language Advisory Committee, or FSLAC, of the Toronto District School Board, also called TDSB. We're dealing with the proposed changes to the Education Act.

M^{me} Hagit Fry: Nos enfants fréquentent des écoles du conseil scolaire de langue anglaise de Toronto, et c'est notre comité qui représente les parents qui veulent s'assurer que nos jeunes aient la possibilité d'apprendre la deuxième langue officielle du Canada à l'école.

Mr. Julian Heller: The TDSB set up the FSLAC as a parent advisory committee following amalgamation. Our role is to advise the board on matters pertaining to French-as-a-second-language programs in the English public board in Toronto. Each of the 22 wards sends parent representatives to the committee, and we currently have 34 parents participating. The committee is co-chaired by a parent who is elected by the parents and a trustee who is elected by the board. French program staff attend each meeting and provide expert input to the committee. We meet formally about seven times during the school year and participate in and organize many on-going consultations and ward- and school-level meetings across Toronto.

Our mission statement, as approved by the board, is to "consult with and advise the board on French-as-a-second-language matters and to contribute to the work of trustees and staff. This partnership of trustees, staff and parents fosters excellence and growth in FSL programs at the board."

While only parental involvement committees and special education advisory committees are recognized by and given support from the Ministry of Education, our board goes beyond that to recognize and value parental input and involvement on French, as well as alternative, inner-city and aboriginal committees.

In addition to core French, the TDSB offers early French immersion starting in senior kindergarten, middle French immersion starting in grade 4, and extended French starting in grades 4 and 7. The variety of programs meets the various needs and interests of our diverse population.

The TDSB demonstrates its commitment to equity of access by providing transportation to French immersion and extended students based on distance criteria.

More than 19,000 students have chosen to be in immersion and extended French at approximately 100 schools which are spread across the city of Toronto in every riding, and still there is unmet demand for more spots, more sites and more French courses in regular and specialized secondary schools.

Since 2005, when public reporting began, our annual SK immersion enrolment has grown from 1,892 to 2,526, despite the challenges of the primary cap and overall declining enrolment at the board. Our SK immersion program offers 100% French instruction from senior kindergarten to grade 3. This is a best practice in im-

mersion and provides the best foundation for achieving bilingualism. Our program far exceeds the minimum guidelines provided in ministry policy, and this is something that TDSB immersion parents value greatly.

We are very proud that our board, in the absence of specific guidelines from the ministry, has started our first full-day immersion SK program at Parkdale public school in downtown Toronto. At 300 minutes per day, meaning 100% instruction in French, we far exceed the 75 minutes of French instruction that the Ministry of Education has left in place as the threshold for immersion designation and funding for kindergarten.

This is where we come to schedule 3 in the good government bill, Bill 110, and that's attached in the package that you should have before you. The bill states that terms and conditions may be imposed by the minister on the permission to offer French programs in the regular and extended day in English boards.

The appropriate motivation for change is to provide more and better opportunities for learning French for every student. It is unclear to us how our children will benefit from any restrictions that the minister may put on French programs in English schools.

In the Legislature, the minister referenced her great respect for input received from the French first-language community. As strong believers in bilingualism, we also support the French first-language community.

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Nous voulons que les écoles de langue française de l'Ontario soient fortes et nombreuses.

However, the vast majority of TDSB parents do not have access to schools in the French boards. French immersion is designed for children whose parents are not proficient in French, and we ask this committee to consider that no input was sought from those who would be most affected by the proposed changes: French-as-a-second-language students and their parents.

Graham Fraser, our Canadian official languages commissioner, has often pointed out that although Canada is bilingual, in fact only a relatively small minority of Canadians speak both English and French. Those who do act as a bridge between the unilingual English and unilingual French communities. Only by increasing bilingualism in both the English and French milieus will Canada truly become bilingual.

Having a minister set terms and conditions on French programming by regulation, allegedly to protect other publicly funded school boards, causes us grave concern. The ministry has set such a low bar regarding hours of instruction in French in an immersion setting that we can only conclude that our own board, with parent input, will be the most mindful of best practices and of meeting the needs of our parents and communities in the extended day.

As parents with children in the Toronto District School Board, we prefer to work this out locally. We have confidence that our board will continue to be a leader in French second-official-language programming and we do not want "terms and conditions." We want every child to

have the opportunity to work towards bilingualism during the regular and the extended day.

The lack of uptake by TDSB parents for the extended day may continue until professional activity and holidays are added into the mix and the numerous logistical and pricing issues are resolved.

The last complication we need is the chill that this amendment to the Education Act would put on our French programs.

This is a bilingual country, and the province of Ontario has an obligation and a commitment to increase the number of bilingual graduates. There has been no indication that the amendments to the Education Act in Bill 110 will help our students or our board to build on our success in providing French programs. Accordingly, we, the parents of the French as a Second Language Advisory Committee of the Toronto District School Board, ask that the amendments adding "terms and conditions" to French in English-language boards be deleted from this bill.

The Acting Chair (Mrs. Donna H. Cansfield): Thank you very much for your presentation, sir. Mr. Clark, I'm going to start with you, since you so graciously gave up your time before.

Mr. Steve Clark: Oh, no problem. I appreciate it, Madam Chair.

I just want to take this opportunity to thank you both for coming. It's interesting that both groups—the previous group as well, the Canadian Parents for French—are making the same recommendations.

Your board is one of the boards that the group mentioned as having better practices, I guess, for your best practices. I just wondered if there was any advice you have for some of the other boards.

Mr. Julian Heller: Each board makes its decisions according to the resources available to it. We are very proud of the successes that we've had and the standards which we have had. Where we can, we offer assistance as a board to those other boards. Certainly, other advocacy groups such as you've heard from serve a valuable function in facilitating communication.

Frankly, as a volunteer advisory committee of parents, we don't have the funds or the resources to co-operate as much as we would like to, but we're certainly aware that other boards across the province are looking to us to set the example. They are, in fact, following some of the things that we take for granted, like the 100% SK. There are some boards which start later. Education research shows that the earlier the start, the more likely you are to succeed in achieving bilingual graduates.

Mr. Steve Clark: Thank you.

The Acting Chair (Mrs. Donna H. Cansfield): Thank you very much. Mr. Kormos.

Mr. Peter Kormos: As has been noted, you're the second group of only two groups that have come forward to address the Education Act amendments. This is the problem with omnibus legislation, omnibus bills. It's presented by the Attorney General—his parliamentary assistant is here, and I have great regard for him, in terms

of addressing Attorney General issues. But where are the Ministry of Education folks? That's the problem.

So, Chair, please, when we come back for clause-by-clause, before we address this, I suspect that we should have somebody from the Ministry of Education explaining what the ministry intends by the addition of imposed terms and conditions on the permission. Because we've heard two illustrations now, examples of how that is very frightening to people who are committed to French-language education. I'd dearly love to know what the ministry contemplates as a term or condition before we vote on this. I'm hoping perhaps the parliamentary assistant could help facilitate that.

The Acting Chair (Mrs. Donna H. Cansfield): Thank you very much, Mr. Kormos. We actually will have Ministry of Education staff available when we do clause-by-clause.

Are there any questions on the—Mr. Ramal?

M. Khalil Ramal: Merci beaucoup pour votre présentation.

Votre « concern », c'est le même qu'avait l'autre groupe, Canadian Parents for French (Ontario).

Je pense que notre gouvernement et notre ministre de l'Éducation aimeraient travailler avec vous dans le futur pour établir des mécanismes spéciaux pour travailler avec le TDSB, « Toronto District School Board ». C'est très important pour nous d'établir des relations spéciales et de continuer à travailler avec vous pour aider tous les élèves de l'Ontario, et leurs parents, pour étudier le français.

Pourquoi votre organisation pensait que passer ce projet de loi n'est pas bien pour vous et n'est pas bien pour le TDSB? C'est la question pour vous.

M^{me} Hagit Fry: Pardon? La question est—

M. Khalil Ramal: Pourquoi vous pensez—

M^{me} Hagit Fry: Pourquoi c'était bon pour nous d'opposer le—

M. Khalil Ramal: Oui, c'est correct. C'est parce que la ministre de l'Éducation tout le temps parle de mécanismes spéciaux avec les francophones de l'Ontario, spécialement pour les enseignants et les enseignantes et spécialement pour les parents et les élèves—

M^{me} Hagit Fry: Mais—pardon. Il y a une différence entre les francophones de l'Ontario, c'est-à-dire les gens qui ont droit à entrer dans le programme des conseils scolaires de langue française de Toronto et de l'Ontario en général, et les familles anglophones, pour ainsi dire ceux qui ne peuvent pas vraiment mettre leurs enfants dans les écoles du conseil scolaire de langue française.

And perhaps I should say it in English so that other people can understand me better.

We represent the interests of kids who do not have the right to go into the French-language school boards. They do not speak sufficient French at home to succeed in these schools. We're trying to give them the possibility to acquire as much French in the English-language school board so that they can become truly bilingual. If you take away part of the day that they may have in French, then they may find it more difficult to become truly bilingual.

So I don't think we're actually working against the French-language school boards. We're trying to give kids as much access to French as possible.

M. Khalil Ramal: Parce que la ministre a des questions tout le temps—accommodations pour tous les élèves de l'Ontario pour entrer dans des classes francophones et des classes de français, spécialement de Toronto. C'est très important pour nous, et c'est aussi important pour vous, d'assister tous les élèves de l'Ontario à étudier le français.

M^{me} Hagit Fry: Oui, c'est très important. Oui.

M. Khalil Ramal: C'est la ministre qui—

The Acting Chair (Mrs. Donna H. Cansfield): Thank you very much for the presentation. I appreciate you taking the time to come and present to the committee. It's nice to see you.

BRIX NAPA VALLEY GRILLE AND WINE BAR

NAVA RESTAURANT AND BAR

The Acting Chair (Mrs. Donna H. Cansfield): Our last presenters are the Brix Napa Valley Grille and Wine Bar, and the Nava Restaurant and Bar: Mike Wilson, Teresa Wilson, Douglas Chan, Mansoor Iqbal and Paul Raymond.

Please say your names and where you're from for Hansard. Also, there is 10 minutes for the presentation, which is inclusive for all of you. I'll put up a two-minuter so you can see—

Mr. Mike Wilson: Thank you.

The Acting Chair (Mrs. Donna H. Cansfield): Thank you so much.

Mr. Mike Wilson: I am Mike Wilson.

Mr. Mansoor Iqbal: I'm Mansoor Iqbal. I work for Mike at Napa Valley Grille.

Ms. Teresa Wilson: I'm Teresa Wilson. We own the establishments.

Mr. Paul Raymond: I'm Paul Raymond, head of security.

Mr. Douglas Chan: I'm Douglas Chan, manager at Nava Restaurant and Bar.

The Acting Chair (Mrs. Donna H. Cansfield): Welcome. Please go ahead.

Mr. Mike Wilson: Good afternoon, and thank you for hearing us. My name is Mike Wilson. I am here to address you on aspects of Bill 110 that relate to the Alcohol and Gaming Commission and your proposals to move the adjudication to the licence appeal board.

Accompanying me today are my wife and co-owner, Teresa Wilson, and some of my employees: Mansoor Iqbal, Paul Raymond and Douglas Chan.

1530

I have worked in a licensed establishment for 30 years and have been a licensee for over 20 years. I have owned and operated five different restaurants, including the Fox and Fiddle, Spezzo Ristorante, On The Curve, Brix Napa Valley Grille and Wine Bar, and Nava Restaurant and

Bar. I currently employ a significant number of staff in Markham, Michael Chan's riding, and Richmond Hill, Reza's riding.

Over the last few years, I have also collected millions of dollars in tax revenues.

At our establishments, we have had many events, including parties for Premier Dalton McGuinty; John Manley when he was the Minister of Industry; our member of Parliament, Bryon Wilfert; Frank Scarpitti, mayor of Markham; Michael Joliffe when he was president of the Ontario Liberal Riding Association; and the Young Liberals of Canada.

I have entertained many corporate events for IBM, American Express—

Interjection.

Mr. Michael Wilson: You noticed—Dell Computers, Pfizer and all the major banks, as well as many other large corporations.

In the first 18 years as a licensee, I never had a liquor license offence. In 2008, an inspector came into Brix Napa Valley Grille and laid a charge. We went to provincial court and fought that charge. We won. After winning and beating the charge, things dramatically changed. The inspector felt we had embarrassed him in court, and then our nightmare began. The very night after we had beaten him in court, the inspector we had defeated raided our restaurant with several AGCO inspectors, uniformed police officers and tobacco inspectors. Regular inspections were escalated and my business was under constant attack. The business became a target of the Alcohol and Gaming Commission.

Over these last few years, officers of the Alcohol and Gaming Commission have been harassing our staff and customers, causing tremendous strain on us as business owners to the point that our businesses are now suffering. Sales have declined dramatically, they are scaring off customers and we are finding it increasingly more difficult to retain staff.

What does this have to do with what we're talking about today, Bill 110? Well, we understand from the industry associations that what the government is trying to do with Bill 110 is fix some of the problems with the Alcohol and Gaming Commission. Frankly, I believe this falls way short of fixing the problems that our employees and our businesses face. There are no accountability provisions for oversight of the CEO and registrar, the actions of his agents, and no measure of independent verification of their actions. I stress the word "independent." There is no independence. Essentially, you're telling us, through Bill 110, that you know there are problems with the AGCO; indeed your own review has said that. But spending money on an appeal against well-paid government lawyers and hoping to win at the Licence Appeal Tribunal is futile.

The chair once remarked, "You don't need to hire lawyers." Is he kidding? If that's the case, then why bring highly paid lawyers against us as licensees? Why don't they just send the inspectors to a hearing to even the playing field?

Panel members, the problem is not solved at the hearing level. Currently, licensees refer to the AGCO—and one of my compatriots also said it earlier—as a “kangaroo court” where the rules change from regular court and the chance of leaving with a positive result is virtually impossible. This makes it a complete waste of time and money.

As a licensee, you avoid the hearing process altogether and just try to negotiate a deal to minimize the penalty. The penalty is usually a suspension where they close your business for one day, one week, 45 days, 60 days; or they just take your liquor licence away. That puts a lot of people out of work and can create an insurmountable financial strain on an already recession-weary business.

It emanates from the bureaucratic level. There are no checks and balances on the AGCO, and even if you want to, you can't because their own board appointees can't question the CEO on operational matters.

If the board can't do it, imagine the situation we are in. We live it every day. It's called fear, intimidation and bullying, and if you stand up against them, you're punished with more visits by the AGCO, more harassment by AGCO personnel, more stress on your staff and management, loss of sales, and increased legal bills to the point where they just run you out of business. A well-respected journalist writing in the media on this issue with specific reference to the Ontario liquor laws said, “A free society must allow for freedom of choice. What cannot be tolerated is the government making citizens policemen, enforcing preventive rules and regulations based on state-dictated subjective criteria.

“Life becomes a prison. There was a country like that once. It was called the Soviet Union.”

These inspectors raid our businesses, attack our managers, staff and customers, and lay subjective charges based on their biased opinions.

Further compounding this, at board level and at the three most senior levels of the Alcohol and Gaming Commission, there is not one single person who has any experience running a bar or a restaurant serving alcohol. Is that the way to run a regulator? Imagine me hiring a CEO with no industry experience to make decisions that affect our livelihoods and the livelihoods of our employees. People in positions of power have responsibility. Power can be a very scary thing if it's misused. The AGCO has too much power and it is flagrantly misusing it. A dramatic change and complete overhaul of the AGCO is the only way to fix the problem. The intimidation, bullying and fearmongering has to stop.

I would like to now turn it over to my head of security, if possible, and he can give you some insights into some of the situations that have arisen in our restaurants.

The Acting Chair (Mrs. Donna H. Cansfield): Certainly. You have four minutes left.

Mr. Paul Raymond: Good afternoon. I've been in the entertainment industry for over 23 years and have worked with Mike and Teresa for 15 years. Within the last two years, it's been constant harassment, the AGCO liquor inspectors coming in with uniformed police

officers on a weekly basis. And this permitting drunkenness, which the other colleagues have talked about and I've heard about today, doesn't make any sense to me, because how do you determine a level of “permit drunkenness.”

Just to give you an example really quickly, we had a young female, 20 years old, trip on the stairs. The inspector was there and automatically said, “She's drunk. You're charged—permit drunkenness.” She had two drinks, and she had a glass of water in her hand at the time. I said, “No, she's fine,” and there's no argument—permit drunkenness, charged. That's how they work. You don't have a say.

The Acting Chair (Mrs. Donna H. Cansfield): Does that conclude your presentation, sir?

Mr. Michael Wilson: It does.

The Acting Chair (Mrs. Donna H. Cansfield): Thank you very much. Mr. Kormos.

Mr. Peter Kormos: Thank you, folks. I've always found the permit drunkenness to be somewhat bizarre. I mean, people go there to drink. I suppose there are people like Mr. Zimmer, who has one modest drink when he goes to an establishment like that, but then there are others of us who perhaps want two or three.

This is a very strange situation, because we've been hearing similar stories during the course of the afternoon. The transfer of the judicial function or quasi-judicial function to the Licence Appeal Tribunal is being heralded by some as a positive thing, and we support that, quite frankly.

But I don't know how you're going to get—I've heard similar stories down in my neck of the woods from licensed operators. Again, just like Reza knows his people, I know my people, and I've been in their joints. Perhaps the parliamentary assistant, when his turn comes, could tell us how we address that, because there are enough stories being told to indicate that there perhaps could be a problem, Mr. Zimmer, and these people deserve better.

The Acting Chair (Mrs. Donna H. Cansfield): Mr. Moridi.

Mr. Reza Moridi: Mr. Wilson, Ms. Wilson and colleagues, thank you very much for appearing before this committee. It's great to see you here.

I was wondering, the transfer of adjudicative power from the AGCO to the tribunal, would you see this as a positive step in a positive direction?

Mr. Michael Wilson: I do. I see anything where you can get power away from the AGCO and more to an independent tribunal as a start, absolutely. I just, unfortunately, don't think it's enough.

Mr. Reza Moridi: You think this is not enough. So what are you proposing?

Mr. Michael Wilson: Again, I think that the gentleman before me proposed some very good ideas about better training of the inspectors, a more consistent way that they do inspections, a way of verifying whether they determine—“permitting drunkenness,” what does that mean? It's at their discretion. And then I think that when there are charges, it's taken away to an independent panel

that can review, because as I say, they're judge, jury and executioner.

Mr. Reza Moridi: They're the same. Okay, thank you very much.

The Acting Chair (Mrs. Donna H. Cansfield): Mr. Clark.

Mr. Steve Clark: Reza, I thought you were going to give some of that money back, from some of that fundraising. You know, it's just something I thought.

I want to thank you very much for your presentation. We've heard a lot of similar comments today. I go back to the list of the Alcohol and Gaming Commission employees here. I watched a show the other day where the head of the Chicago Cubs—it's called Undercover Boss—went and worked. I think we should get the CEO and some of these major people from alcohol and gaming and put them behind the bar, put them as bouncers, put

them as servers, and see how they make out against their own enforcement employees.

Mr. Michael Wilson: I applaud that.

Mr. Steve Clark: Thank you very much for coming.

Mr. Peter Kormos: And maybe it's not you, maybe it's your clientele that they don't like.

Mr. Michael Wilson: Well, it's possible.

The Acting Chair (Mrs. Donna H. Cansfield): Thank you very much, Mr. Wilson, for your presentation. And thanks to all of you for coming.

I would just like to remind everyone that clause-by-clause is next Monday, November 29, here in this committee room, and that the amendment deadline is 12 noon on Friday, November 26, at the clerk's office, if you have any amendments to present to this bill.

Thank you, everyone. We're adjourned.

The committee adjourned at 1540.

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Second Session, 39th Parliament

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Deuxième session, 39^e législature

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Lundi 29 novembre 2010

Standing Committee on General Government

Good Government Act, 2010

Comité permanent des affaires gouvernementales

Loi de 2010 sur la saine
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Monday 29 November 2010

Lundi 29 novembre 2010

The committee met at 1405 in room 151.

GOOD GOVERNMENT ACT, 2010

LOI DE 2010 SUR LA SAINTE
GESTION PUBLIQUE

Consideration of Bill 110, An Act to promote good government by amending or repealing certain Acts /
Projet de loi 110, Loi visant à promouvoir une saine gestion publique en modifiant ou en abrogeant certaines lois.

The Chair (Mr. David Oraziotti): Good afternoon, everyone, and welcome to the Standing Committee on General Government, clause-by-clause on Bill 110.

To start off, I'd just ask for unanimous consent to set aside sections 1, 2 and 3 to deal with the schedule of the bill, and deal with the proposed amendments. So if I've got unanimous consent to do that, we can get moving.

Interjection: Agreed.

The Chair (Mr. David Oraziotti): Okay.

Before we begin with the first amendment, which is Conservative motion number 1, are there any comments that anyone would like to make with respect to the bill? You obviously will have an opportunity to do that on any of the amendments, but if you'd like to put anything on record in advance of that, now might be the time to do so. Mr. Kormos, go ahead.

Mr. Peter Kormos: I just wanted to lay this out: The only schedule that we're particularly interested in is schedule 3, and we indicated last week that we were going to ask the ministry staff to talk about what the government had in mind with the amendments in section 1 of schedule 3.

As for the rest of it, I note that there are a number of Conservative amendments, but we'll not be raising any objections to other parts of the bill.

The Chair (Mr. David Oraziotti): Any further comments? Seeing none, we'll move to schedule 1, the first Conservative motion. Mr. Chudleigh, go ahead.

Mr. Ted Chudleigh: I move that section 1 of schedule 1 to the bill be amended by adding the following subsection:

“(2.1) Section 4 of the act is amended by adding the following subsections:

“Chief executive officer

“(2) Subject to subsection (3), the board of the commission may appoint a chief executive officer of the commission.

“Limitation

“(3) The chief executive officer of the commission may be the chair of the board but shall not be the registrar.”

The Chair (Mr. David Oraziotti): Any further comment to that?

Mr. Ted Chudleigh: I think it's self-explanatory. During submissions, we heard that there were perceived conflicts when the registrar and the chair of the board were the same person.

The Chair (Mr. David Oraziotti): Okay, thank you. Mr. Zimmer, comments?

Mr. Ted Chudleigh: I'm sure the government will be in favour of this—

The Chair (Mr. David Oraziotti): All those in favour? All those opposed? The motion is lost.

I understand, members of the committee, that any motion that is before you that has another motion attached with the same number indicating R is the revised motion that you're going to be reading, so—

Mr. David Zimmer: I'm sorry, Chair. I'm just having trouble hearing.

The Chair (Mr. David Oraziotti): Sorry. Any of the motions that are before you in your package that have an R attached to them for the same motion, the committee member will be reading those motions, and you can ignore the other ones.

Mr. Chudleigh, 2R.

Mr. Ted Chudleigh: I move that subsection 14.1(7) of the Alcohol and Gaming Regulation and Public Protection Act, 1996, as set out in subsection 1(7) of schedule 1 to the bill, be amended by adding “amend it” after “penalty.”

The Chair (Mr. David Oraziotti): Any further comment?

Mr. Ted Chudleigh: Again, in sections, there was some suggestion that this would clarify some of the actions of the Alcohol and Gaming Commission.

The Chair (Mr. David Oraziotti): Any further comment from any other committee members?

Mr. David Zimmer: No.

The Chair (Mr. David Oraziotti): Okay.

All those in favour of Conservative motion 2R? Opposed? The motion is lost.

Shall schedule 1, section 1, carry? Opposed? The section is carried.

There are no further amendments to sections 2, 3, 4 and 5, so if we can vote on those together. Schedule 1, sections 2 through and including 5: All those in favour? Opposed? That's carried.

Schedule 1, section 6: Conservative motion 3R. Mr. Chudleigh, go ahead.

Mr. Ted Chudleigh: I move that section 6 of schedule 1 to the bill be amended by adding the following subsection:

"(13.1) Section 15 of the act is amended by adding the following subsections:

"Warning or monetary penalty

"(5.1) Instead of issuing a proposal under any of subsections (1) to (5) with respect to a licensee, the registrar may issue a warning to the licensee or issue a proposal to impose a monetary penalty against the licensee in accordance with this section and the regulations if the registrar is of the opinion that the public interest would be adequately protected by doing so.

"Purpose

"(5.2) The purpose of a monetary penalty under subsection (5.1) is to promote compliance with this act and the regulations.

"Amount

"(5.3) Subject to the prescribed requirements, the registrar shall determine the amount of a monetary penalty under subsection (5.1) to reflect the purpose of the penalty and the circumstances of the licensee.

"Condition of licence

"(5.4) If the registrar issues a proposal to impose a monetary penalty against a licensee under subsection (5.1), it is a condition of the licence that the licensee is required to pay the penalty within the time period that the registrar specifies in the proposal."

The comment that I would make is, so long as the public interest is protected, this motion extends the options available to the registrar under section 15 of the Liquor Licence Act by allowing him or her to issue a warning or a proposal for a monetary penalty. The intent of this motion is to help to ensure fairness for both the licensee and the employees of that licensee without compromising public safety.

The proposal for a monetary penalty will be subject to the same provisions of the act as a proposal to revoke or suspend a licence, subject to the regulations for this type of penalty.

I think we heard from deputants at the hearings that when a facility loses its licence, it is really the service staff and the people who are working for the organization who pay a disproportionate amount of that penalty. To protect them, this would be an excellent amendment, I think. It would show concern for the workers of Ontario. I'm sure the government would have no issue with that.

1410

The Chair (Mr. David Oraziotti): Mr. Zimmer.

Mr. David Zimmer: I appreciate the intent of what the motion is trying to achieve, but the expanded use of

monetary penalties will require further analysis. The Ministry of the Attorney General will take this suggestion under advisement.

Mr. Ted Chudleigh: But at this time, you don't care about the employees?

The Chair (Mr. David Oraziotti): Any further comment?

Mr. Ted Chudleigh: Apparently not.

The Chair (Mr. David Oraziotti): Conservative motion 3R: All those in favour? Opposed? The motion is lost.

Conservative motion 4R: Mr. Chudleigh, go ahead.

Mr. Ted Chudleigh: I move that subsection 6(26) of schedule 1 to the bill be struck out and the following substituted:

"(26) Subsection 21(1) of the act is amended by adding the following paragraphs:

"9. Impose a monetary penalty under subsection 15(5.1).

"10. Restrict further applications for a licence to sell liquor in respect of the same premises, as described in subsection 15(8)."

Again, this supports the previous—

The Chair (Mr. David Oraziotti): Excuse me, Mr. Chudleigh. This motion, I'm informed by the clerk, is now out of order because it was dependent on the previous motion carrying, so—

Mr. Ted Chudleigh: I was about to say that. I agree with the clerk.

The Chair (Mr. David Oraziotti): All right.

Mr. Ted Chudleigh: Not necessarily with the government, though.

The Chair (Mr. David Oraziotti): We're going to move on to—

Mr. David Zimmer: So 4R is out of order?

The Chair (Mr. David Oraziotti): Correct.

Amendment number 5: Mr. Chudleigh, go ahead.

Mr. Ted Chudleigh: I move that subsection 23(11) of the Liquor Licence Act, as set out in subsection 6(29) of schedule 1 to the bill, be struck out and the following substituted:

"Same

"(11) Following a hearing to consider any other proposal referred to in subsection 21(1), (2) or (3), the tribunal may direct the registrar,

"(a) not to carry out the proposal;

"(b) if the proposal is not one to impose a monetary penalty, not to carry out the proposal but to impose a monetary penalty against the licensee in the amount that the tribunal specifies and payable within the time period that the tribunal specifies, subject to the prescribed requirements; or

"(c) to carry out the proposal, in whole or in part, and with any changes that the tribunal considers appropriate, in which case the tribunal may direct the registrar to approve an application to which the proposal relates."

The Chair (Mr. David Oraziotti): Any further comment?

Mr. Ted Chudleigh: To help improve fairness when the registrar issues a proposal that is not a monetary penalty, this motion will allow the tribunal not to carry out that proposal and, instead, to issue a proposal for a monetary penalty subject to the regulations, if the proposal is not one to impose a monetary penalty.

The Chair (Mr. David Oraziotti): Mr. Zimmer, any comment on that?

Mr. David Zimmer: No comment.

The Chair (Mr. David Oraziotti): Conservative motion number 5: All those in favour? Opposed? The motion is lost.

Conservative motion 6R: Mr. Chudleigh, go ahead.

Mr. Ted Chudleigh: I move that section 23 of the Liquor Licence Act, as set out in subsection 6(31) of schedule 1 to the bill, be amended by adding the following subsection:

“Exception

“(15) Despite subsection (14), if a hearing before the board under this section has not concluded by the day section 6 of schedule 1 to the Good Government Act, 2010 comes into force and if any member of the panel holding the hearing ceases at any time after that day to sit on the panel, then, at the request of the person who requested the hearing, the tribunal shall hold the hearing.”

Again, if the composition of the board holding a hearing changes after this section comes into force, this motion provides the person who requested the hearing the option to request that the tribunal hold the hearing.

The Chair (Mr. David Oraziotti): Mr. Zimmer.

Mr. David Zimmer: The Ministry of the Attorney General will take this suggestion under advisement.

The Chair (Mr. David Oraziotti): Any further comment?

Mr. Ted Chudleigh: Recorded vote.

Ayes

Chudleigh, Clark, Kormos.

Nays

Jaczek, Kular, Mangat, Naqvi, Zimmer.

The Chair (Mr. David Oraziotti): The motion is lost. Mr. Chudleigh, Conservative motion 7R: Go ahead.

Mr. Ted Chudleigh: I move that section 6 of the bill be amended by adding the following subsection:

“(36.1) Subsection 62(1) of the act is amended by adding the following paragraph:

“6. governing the procedure for issuing a proposal for a monetary penalty under subsection 15(5.1);”

This supports the amendment of section 4 of the Alcohol and Gaming Regulation and Public Protection Act, which I think was turned down and which I think makes this amendment—

The Chair (Mr. David Oraziotti): Right. So you were getting there.

Mr. Ted Chudleigh: I was getting there. Does the clerk agree with me this time?

The Chair (Mr. David Oraziotti): Yes, it was dependent on 3R, so this motion is out of order.

Schedule 1, section 6: Shall it carry? Carried.

Schedule 1, sections 7, 8, 9, through and including 10: There are no proposed amendments. Shall they carry? Carried.

Schedule 1, section 11. Conservative motion number 8: Mr. Chudleigh, go ahead.

Mr. Ted Chudleigh: I move that subsection 11(2) of schedule 1 to the bill be amended by adding “(2.1)” after “1(1)”.

The Chair (Mr. David Oraziotti): Mr. Chudleigh, I think you’re probably aware that motion number 8 is out of order as a result of the very first motion not carrying.

Mr. Ted Chudleigh: Okay.

The Chair (Mr. David Oraziotti): Schedule 1, section 11: Shall it carry? That’s carried.

Shall schedule 1 carry? Carried.

Schedule 2, sections 1 through and including section 9: There are no amendments. Shall they carry as presented? Carried.

Shall schedule 2 carry? Carried.

Mr. Kormos, your notice, motion number 9: Do you want to speak to that?

Mr. Peter Kormos: We’re at schedule 3 now.

The Chair (Mr. David Oraziotti): Correct.

Mr. Peter Kormos: This was the problem around the amendment and imposed terms and conditions on the permission. We had two presenters last week who had concerns about the effect of this amendment. We were told that ministry staff would be here today, so I’m putting to the parliamentary assistant that we should hear from those staff so they can tell us what the government’s intention is with this amendment and what it contemplates.

Mr. David Zimmer: I believe we have someone from the ministry here.

The Chair (Mr. David Oraziotti): Okay. Welcome to the committee.

Mr. Peter Kormos: Because those folks at the committee were pretty hot about this.

Mr. David Zimmer: Thank you for joining us today.

The Chair (Mr. David Oraziotti): If you want to elaborate perhaps on your question, Mr. Kormos. I just ask ministry folks, before you present any information, to state your name for the recording purposes of Hansard and it will be included into the record.

Mr. Peter Kormos: You know that there were folks here last week concerned about this amendment, concerned that it could be used to dilute the French-language education that their kids are getting. So you know those are the concerns. I told them that we’d have a chance today to hear from you in terms of letting us know what the motivation is for the amendment, what it addresses and what are the conditions under which you contemplate it would be used.

1420

Mr. Rupert Gordon: Certainly, Mr. Kormos. My name is Rupert Gordon and I'm manager of early learning policy at the Ministry of Education. I'm happy to give you a general overview of that. Our parliamentary assistant is here, too, and he may have some remarks he would wish to make on this point.

In general, the notion is to use this capacity for terms and conditions to help clarify the distinction between French-as-a-first-language and French-as-a-second-language programs. I think it would be fair to say that the government remains very supportive of French-as-a-second-language education, very supportive of French immersion programming, but has been interested in this notion of clarifying the distinction between the two programs.

Some of the things that might be contemplated here would be, for example, consistent with existing ministry policy, that English-language school boards would be expected to plan their long-range programs largely using the framework of English-language program documents; conditions that, for example, the materials that boards use in registering and informing parents about French immersion communicate that those programs support the acquisition of French as a second language; and an approach with regard to the offering of extended day programming under the act in French immersion, suggesting that that would be connected to core day French immersion programs and reflect the approach that a board uses in those programs.

Those are the kinds of things that have been contemplated here. They're largely, as I suggested, consistent with existing policy, certainly with regard to the notion of the curriculum documents that are used for planning and the notion that French immersion programming supports the acquisition of French as a second language.

Mr. Peter Kormos: Fair enough, but that compels me to ask why you need the amendment if you say that existing policies already set out these things that you're speaking to.

Ms. Elisabeth Scarff: My name is Elisabeth Scarff. I'm legal counsel with the Ministry of Education.

It was purely for clarification, because the minister's power to give this permission can attach terms and conditions right now. The provision was added purely to make it clear, if there were concerned parties, that that authority was there.

Mr. Peter Kormos: Okay. Thank you kindly, folks.

Mr. Steve Clark: Chair, can I ask a question?

The Chair (Mr. David Orazietti): Mr. Clark, go ahead.

Mr. Steve Clark: First of all, thank you very much for coming to clarify. There was some concern by the groups last week that the wording will open up an opportunity for boards to review the process. I understand their concern, obviously, is that they're going to cut. Do you share that concern? Could a board use that wording to do exactly what the deputants were saying?

Mr. Rupert Gordon: I'll certainly let the lawyer opine on this too. But the notion would be that the terms and conditions would need to be prescribed or outlined by the minister in some kind of way, and that those would then be connected to her approval.

I think the notion that it would be a kind of open-ended screen that others could utilize is something that I don't see.

Ms. Elisabeth Scarff: It's terms and conditions on the minister's permission, so it would be those terms that the minister had determined were appropriate.

Mr. Steve Clark: What checks and balances are in place, then, for what the deputants were saying? How would that be stopped by the ministry, if a board chose to cut services based on your new wording?

Mr. Rupert Gordon: I think that we monitor the activity of boards regularly. We give them direction. Folks communicate with us about issues, and we work very closely with the sector to address some of those challenges. I think there might be other courses of action open to those folks too, in terms of engaging directly with the boards themselves.

Certainly, we regularly are engaging with boards and providing them with clarity around the direction that applies to them from the ministry.

The Chair (Mr. David Orazietti): Okay? Satisfied? All right. Thank you very much for being here today.

Mr. Rupert Gordon: Thank you.

The Chair (Mr. David Orazietti): All right. We'll vote on—

Mr. Peter Kormos: Chair, if I may—

The Chair (Mr. David Orazietti): Yes, Mr. Kormos?

Mr. Peter Kormos: I ask you to call section 1 alone.

The Chair (Mr. David Orazietti): Right.

Mr. Peter Kormos: I'll be asking for a recorded vote.

Just briefly, by way of explanation: I trust the civil servants. I don't trust politicians, and that's the problem. The civil servants have told us what they contemplate, but that doesn't prevent a subsequent minister from doing something very foolhardy, reckless, dangerous, with this provision, and that's why the New Democrats are voting against it.

The Chair (Mr. David Orazietti): We'll call for a recorded vote on schedule 3, section 1.

Ayes

Jaczek, Kular, Mangat, Naqvi, Zimmer.

Nays

Clark, Kormos.

The Chair (Mr. David Orazietti): Schedule 1 is carried.

Sections 2 and 3 of schedule 3: There are no proposed amendments. Shall those sections carry? Carried.

Shall schedule 3, as presented, carry?

Mr. Peter Kormos: Recorded vote, please.

Ayes

Jaczek, Kular, Mangat, Naqvi, Zimmer.

Nays

Clark, Kormos.

The Chair (Mr. David Oraziotti): Okay. Schedule 3 is carried.

Schedule 4, sections 1 and 2: There are no amendments. Shall they carry? Carried.

Shall schedule 4 carry? Carried.

Schedule 5, sections 1 through and including 8: Shall they carry? Carried.

Shall schedule 5 carry? Carried.

Schedule 6, sections 1 through and including 10: Shall they carry? Carried.

Shall schedule 6 carry? Carried.

Schedule 7, sections 1 through and including 4: Shall they carry? Carried.

Shall schedule 7 carry? Carried.

We're going to return to what we had set aside at the beginning of the meeting.

Shall section 1 carry? Carried.

Shall section 2 carry? Carried.

Shall section 3 carry? Carried.

Shall the title of the bill carry?

Mr. Peter Kormos: Mr. Chair?

The Chair (Mr. David Oraziotti): Mr. Kormos.

Mr. Peter Kormos: That's a debatable matter, and now we get into the heavy lifting here.

The Chair (Mr. David Oraziotti): To put further comment on the record, go ahead, Mr. Kormos.

Mr. Peter Kormos: You know how objectionable the title of this bill is: An Act to promote good government

by amending or appealing certain Acts. You guys used to howl like stuck pigs when the Tories did that kind of—

Interjection: They're howling now.

Mr. Peter Kormos: They're not, but you howled like stuck pigs when the Tories used to introduce legislation like that with oxymoronic titles. Now, all of a sudden, you acquire the same bad habits. No wonder you're at 76% of Ontarians wanting to toss you out of government. You come up with stupid titles for bills like this.

This bill could have been called any number of things. I suppose, at the end of the day, the title of the bill hasn't given you a bump in the polls, and I suspect Mr. Fantino will be the next federal member for Vaughan. I look forward to seeing him, Flaherty and Baird in the same cabinet room together. That'll teach Mr. Harper to be soliciting Julian Fantino for a Tory candidate.

The title is objectionable. I'm going to be voting against it and I'm calling for a recorded vote.

The Chair (Mr. David Oraziotti): A recorded vote on the title of the bill.

Ayes

Jaczek, Kular, Mangat, Naqvi, Zimmer.

Nays

Clark, Kormos.

The Chair (Mr. David Oraziotti): The title of the bill carries.

Shall Bill 110 carry? Carried.

Shall I report the bill to the House? Carried.

Thank you, folks. That's it. Committee is adjourned. Thank you very much for being here today.

The committee adjourned at 1430.

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Mr. Peter Kormos (Welland ND)

Mr. Yasir Naqvi (Ottawa Centre / Ottawa-Centre L)

Mr. David Zimmer (Willowdale L)

Also taking part / Autres participants et participantes

Mr. Rupert Gordon, manager, early learning policy, Ministry of Education

Ms. Elisabeth Scarff, counsel, legal services branch, Ministry of Education

Clerk / Greffier

Mr. William Short

Staff / Personnel

Mr. Michael Wood, legislative counsel

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Mercredi 2 mars 2011

**Standing Committee on
General Government**

Organization

**Comité permanent des
affaires gouvernementales**

Organisation

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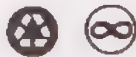
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENT

Wednesday 2 March 2011

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Mercredi 2 mars 2011

The committee met at 1616 in committee room 1.

ELECTION OF VICE-CHAIR

The Chair (Mr. David Orazietti): Okay, folks, good afternoon. This is the Standing Committee on General Government. We're here for an organizational meeting to elect the Vice-Chair. I will hear any nominations for a Vice-Chair. Mr. Mauro.

Mr. Bill Mauro: I'm very pleased and honoured to nominate for Vice-Chair the champion of Brownell Nights, Mr. Jim Brownell, MPP for—

Interjections.

Mr. Bill Mauro: I missed it, yeah.

Mr. Rosario Marchese: Way to go, Jim.

The Chair (Mr. David Orazietti): Do you accept, Mr. Brownell?

Mr. Jim Brownell: I accept.

The Chair (Mr. David Orazietti): Comments, questions?

Mr. Rosario Marchese: I support it.

The Chair (Mr. David Orazietti): Okay. All in favour? Carried. Thank you.

The committee adjourned at 1617.

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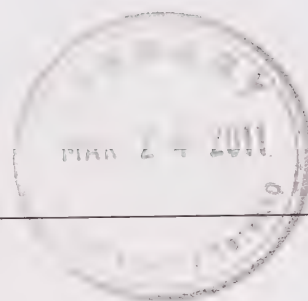
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Assemblée législative de l'Ontario

Deuxième session, 39^e législature

Official Report of Debates (Hansard)

Wednesday 9 March 2011

Journal des débats (Hansard)

Mercredi 9 mars 2011

Standing Committee on General Government

Toronto Transit Commission
Labour Disputes Resolution Act,
2011

Comité permanent des affaires gouvernementales

Loi de 2011 sur le règlement
des conflits de travail
à la Commission de transport
de Toronto

Chair: David Oraziotti
Clerk: William Short

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Wednesday 9 March 2011

Mercredi 9 mars 2011

The committee met at 1603 in room 228.

SUBCOMMITTEE REPORT

The Chair (Mr. David Oraziotti): Good afternoon, folks. Welcome to the Standing Committee on General Government. I understand we've got a subcommittee report in front of us. Could I ask the member to read the report?

Mr. Shafiq Qaadri: I enter the subcommittee report as follows:

Your subcommittee met on Friday, March 4, 2011, to consider the method of proceeding on Bill 150, An Act to provide for the resolution of labour disputes involving the Toronto Transit Commission, and recommends the following:

(1) That, pursuant to the order of the House dated Thursday, March 3, 2011, the committee hold public hearings in Toronto on Wednesday, March 9, 2011, and Monday, March 21, 2011, during its regular meeting times.

(2) That the committee clerk, in consultation with the Chair, post information regarding public hearings on Canada NewsWire, the Ontario parliamentary channel and the committee's website.

(3) That interested parties who wish to be considered to make an oral presentation contact the committee clerk by 12 noon on Wednesday, March 16, 2011.

(4) That the committee clerk schedule the witnesses on a first-come, first-served basis.

(5) That witnesses be offered 10 minutes for their presentation, and that witnesses be scheduled in 15-minute intervals to allow for questions from committee members.

(6) That the deadline for written submissions be 4 p.m. on Monday, March 21, 2011.

(7) That the research officer provides a summary of the presentations on Tuesday, March 22, 2011, at 12 noon.

(8) That, pursuant to the order of the House dated Thursday, March 3, 2011, amendments to the bill be filed with the clerk of the committee by 4 p.m. on Tuesday, March 22, 2011.

(9) That, pursuant to the order of the House dated Thursday, March 3, 2011, the committee meet on Wednesday, March 23, 2011, for clause-by-clause consideration of the bill.

(10) That the committee clerk, in consultation with the Chair, be authorized prior to the adoption of the report of

the subcommittee to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

Mr. Chair, that is your subcommittee report.

The Chair (Mr. David Oraziotti): Thank you, Mr. Qaadri. Questions or comments?

Mr. Peter Kormos: Thank you. I spoke briefly with the acting parliamentary assistant about this before we began. Paragraph 5 can be somewhat ambiguous and I'm hoping that we can resolve it simply by agreeing here and now that there are 15-minute slots, that it is recommended that a participant provide the latter five minutes of a 15-minute slot for questions and answers, but that at the end of the day the 15 minutes belongs to the presenter, should they wish to use all of it or part of it.

Mr. Ted McMeekin: Absolutely.

Mr. Shafiq Qaadri: I think the committee is in agreement.

Mr. Peter Kormos: Thank you. That addresses it.

The Chair (Mr. David Oraziotti): Any other questions or comments on the report? Seeing none, all in favour? Opposed? Carried.

TORONTO TRANSIT COMMISSION
LABOUR DISPUTES RESOLUTION ACT,
2011LOI DE 2011 SUR LE RÈGLEMENT
DES CONFLITS DE TRAVAIL
À LA COMMISSION DE TRANSPORT
DE TORONTO

Consideration of Bill 150, An Act to provide for the resolution of labour disputes involving the Toronto Transit Commission.

AMALGAMATED TRANSIT UNION,
LOCAL 113

The Chair (Mr. David Oraziotti): We'll get to the first presentation, Bob Kinnear, Amalgamated Transit Union, Local 113. Good afternoon, Bob. How are you?

Mr. Bob Kinnear: Very well, thank you.

The Chair (Mr. David Oraziotti): Good. Welcome to the Standing Committee on General Government. As you've heard Mr. Kormos identify, you've got 15 minutes for your presentation. Any time that you don't use

for your presentation will be allotted to members for questions. You can start when you're ready. Just state your name for the purposes of our recording Hansard.

Mr. Bob Kinnear: My name is Bob Kinnear, and I am the president and business agent of the Amalgamated Transit Union, Local 113. Local 113 has been part of Toronto since our founding in 1899. Over the last 112 years, an untold number of men and women have served this city as public transit workers, even before there was a TTC.

I am proud to be part of this history. I began working at the TTC as a janitor over 22 years ago. I have also been a collector, a bus operator and a subway operator. I am speaking here today on behalf of my fellow workers, the nearly 10,000 men and women of our union who operate and maintain the Toronto Transit Commission, and also on behalf of the many thousands who will come after us.

This legislation is directed at them. This bill takes away their right to bargain with the only thing they have to bargain with: their labour and their skill. It takes away what little measure of influence they have over their working lives. It reverses centuries of progress in workplace relationships and in democracy in general. And it does so for the lowest of political reasons: to try to save a few votes in a few close ridings in Toronto.

Of course, we don't expect the government to admit this, so let's look at the actual reasons given by the Minister of Labour for why this bill is necessary and why it is necessary to rush it through the legislative process so quickly.

Minister Sousa gave three main reasons for this bill. Let me take you through each in turn.

First of all, he claimed that a TTC strike cost the city \$50 million a day in lost economic activity. Where did this figure come from? This figure was from a September 2008 city of Toronto staff report on whether or not the TTC should be designated as an essential service. It seems that this \$50-million figure was picked out of thin air with no basis in fact.

Don't take my word for this. The distinguished Professor David Doorey at York University has been highly critical of using this figure as justification for this legislation. In Doorey's Workplace Law Blog, Dr. Doorey recently wrote this: "This \$50-million figure has been thrown around recklessly by all of the advocates of a TTC strike ban and the media without any assessment of how it was calculated."

1610

According to Dr. Doorey, we have no idea where this figure came from or how it was arrived at, and yet the minister quoted the \$50 million as if it were gospel. I am sure that if you take a few minutes to read Dr. Doorey's article, which I have provided copies of, you will also come to the conclusion that this \$50-million figure is bogus. There goes the minister's first reason for this bill: strike 1.

The second reason the minister gave for the necessity of this bill was that it is a matter of public health and

safety, but he did not cite one single example where a previous TTC strike had life-threatening or serious health consequences for anyone, nor did he acknowledge that our union has always looked after Wheel-Trans users, such as dialysis patients, for whom our service is actually essential. In fact, in the 2008 staff report, the one I've already quoted, the question of public health and safety was discussed. Let me quote again from that report: "The Toronto Fire Services, Toronto Emergency Medical Services and the Toronto Police Service have each provided their assessment regarding the impact of a strike at the TTC on their ability to effectively respond to emergencies. Each service has reported that there has been no noticeable effect upon their response times or ability to respond due to a strike by TTC employees and the interruption of TTC services."

In the very next paragraph, the report admits that "according to Toronto Public Health ... there is no available data quantifying any health impacts during a transit strike in Toronto...."

There we have it: There is no data and there are no examples of public health being compromised by a TTC strike. The city services actually responsible for public health and safety—the police, fire and emergency services—all report that TTC strikes have not affected their response times, so there goes the minister's public health and safety argument. It was not only made up, but it contradicted evidence on the public record: strike 2.

It is also very ironic that the same city staff report also recommended against making the TTC an essential service. To quote the report: "Based on all the above issues, we believe that the TTC, the city and its residents would be best served by not declaring TTC as an essential service, but by leaving the situation as it is today."

The only report available on the consequences of a TTC strike to Toronto not only pulled the figure of \$50 million out of thin air, so far as we can tell, but it offered no evidence of health and safety impacts and actually recommended against designating the TTC an essential service.

But I guess that doesn't matter to the minister because, as he put it when introducing the bill, "this legislation comes in response to the city council of Toronto motion to prohibit strikes and lockouts at the TTC."

Finally, at last, we have some factual reason for Bill 150: The city asked for it. Is that the principle upon which this legislation is based? Well, not exactly, because that same city asked for an additional \$150 million for the TTC and other things, a request the government turned down. We're not dealing with a principle here, are we? Just because the city asks for something does not obligate the government to respond. Strike 3, Minister.

Your stated reasons for taking away our rights are without any factual or principled foundation whatsoever. It is outrageous that citizens of this province can be stripped of fundamental rights based on such misinformation and twisted principles. If we were in a court of law, the government would lose this case hands down. But we understand the reality. We are not in a court of

law where facts and evidence matter. We are in the court of public opinion where emotion and prejudice matter more than facts.

Over a month ago, our union offered to sign an irrevocable declaration pursuant to section 40 of the Labour Relations Act to refer all unresolved bargaining issues to binding arbitration without any disruption of service. TTC management wanted to sign the deal, but they were shoved aside by city officials who wanted confrontation.

Those city officials, acting under orders from the mayor's office, not only refused our offer to not strike, they insulted the union by demanding that we sign away our full collective bargaining rights forever and give up any recourse to the courts against what we believed were unjust and unconstitutional laws. Because no one in their right mind would have signed such an agreement, the city claimed that there was an impasse in negotiating a no-strike agreement. But that impasse was all on their side, and deliberately so. I just want the record to be clear that the city refused our offer of a no-strike agreement under existing labour law.

I also want the record clear that the minister did not consult with our union about this legislation. The only conversation I ever had with Minister Sousa was very brief, when he called me just before he introduced the bill in the House. So when he says that we were consulted on this bill, it certainly wasn't by him; it was by low-level officials in the Ministry of Labour, and it wasn't much of a meeting. It was yet another insult: "We're taking away your rights. Any questions?"

My 10 minutes are almost up, so I do not have the time to explain why this bill violates an international treaty to which Canada is a signatory. Nor do I have time to explain why recent Supreme Court of Canada decisions provide strong signals that this bill may well contravene the Charter of Rights and Freedoms. The fact that the people whose rights are being stripped away have only been given 10 minutes to defend themselves is shameful and undemocratic in the extreme.

Anyone who votes for this bill is on the wrong side of history. If you do so on the grounds that have been presented by the minister, you are on the wrong side of the truth because those grounds are without foundation.

You can take away our rights, but you cannot take away our voices. We will continue to protest this legislation and the anti-worker sentiment it reflects. Our union will work with other like-minded individuals and organizations to promote public understanding of the legitimate, hard-won and democratic rights of workers to be free to associate and co-operate in improving their lives and those of their children.

I will now take any questions, if there are any.

The Chair (Mr. David Oraziotti): Thank you very much. We only have a very brief time to get around here, so if you've got something quick, Norm and Ted—

Mr. Randy Hillier: Thank you, Mr. Kinnear. I'd just like to have clarification here. You say one of the staff reports is saying that the \$50 million is bogus and should

be dismissed, and the other staff report, that says that the TTC ought not to be an essential service, is acceptable. So one staff report is good, one is bad, but both are staff reports.

Mr. Bob Kinnear: It's actually the same report where they make reference to the \$50 million. In that same report, they—

Mr. Randy Hillier: So one part of the report of the bogus, and the other part is acceptable to you?

Mr. Bob Kinnear: I'm not saying whether it's acceptable or not; I'm just simply telegraphing what the report stipulates. I didn't produce the report. That's what the report—

Mr. Randy Hillier: No, but you're suggesting that the report is bogus, this \$50 million—

Mr. Bob Kinnear: It is.

Mr. Randy Hillier: But you're also using that same report to justify your position.

Mr. Bob Kinnear: I'm simply reiterating what the report says as far as deeming transit work as an essential service. The report very clearly said that it would not be in the best interests of the TTC or its residents.

Mr. Randy Hillier: What about the electoral—

The Chair (Mr. David Oraziotti): Mr. Hillier, we need to move on, or we're not going to have enough time as a result. Thank you for your question.

Mr. Kormos, go ahead.

Mr. Peter Kormos: People know where the New Democrats are on this legislation. I think it would be far more interesting to hear you engage with the government members here. I'll give them my time.

The Chair (Mr. David Oraziotti): That's very generous of you, Mr. Kormos.

Mr. Peter Kormos: That's the kind of guy I am.

The Chair (Mr. David Oraziotti): Mr. McMeekin, go ahead.

Mr. Ted McMeekin: You're a very generous guy, Peter. Thank you for that.

Mr. Kinnear, I share your interest in seeing, ideally, parties come together, go through the collective bargaining process and come up with solutions, but I also remember that Sunday back in 2008 when we came to this place and all three parties agreed that we would order the strikers back. I'm wondering how this legislation, from a process perspective, differs from what we did in 2008.

1620

Mr. Bob Kinnear: In 2008 we had the ability to go on strike. Obviously, you're right; the Legislature reconvened and ordered us back to work. By enabling us to have the right to strike, there's an incentive from the city and the TTC's perspective, because obviously they want to avoid a strike and the potential inconvenience to the public. So there is incentive for us to sit down and bargain hard. We have recently commenced bargaining about three weeks ago, and I can tell you that those negotiations have been completely stagnant because of the parties waiting for the legislation.

Mr. Ted McMeekin: The legislation does acknowledge and, I think, sets out the potential for collective bargaining to continue. I understand that, in situations in law where this kind of essential service legislation is in place, about 81% of those situations in fact get resolved through the collective bargaining process. Would you agree that the bill doesn't prohibit collective bargaining and, in fact, still was set up as the ideal?

Mr. Bob Kinnear: It doesn't prohibit it legally, but I can tell you—we're experiencing it right now, as a matter of fact. You can feel free to touch base with the employer. There is no incentive for what I call hard bargaining, where there is a deadline, where, potentially, there could be a major inconvenience, which encourages both parties, quite frankly, to come closer to an agreement. Right now, there's no incentive to do that, and we're experiencing it. Negotiations have been completely stagnant so far.

The Chair (Mr. David Oraziotti): That's the time we have. Thank you, Mr. Kinnear, for coming in today. That's the time for your presentation.

Mr. Bob Kinnear: Thank you.

TORONTO AND YORK REGION LABOUR COUNCIL

The Chair (Mr. David Oraziotti): Next presentation: Toronto and York Region Labour Council, John Cartwright. Good afternoon, Mr. Cartwright. Welcome to the Standing Committee on General Government. If you've been listening, as you've heard, you have 15 minutes for your presentation.

Mr. John Cartwright: I thought there was a time clock up somewhere, no? I don't see one.

Thank you and good afternoon, committee members. I'm here on behalf of the Toronto and York Region Labour Council, representing about 195,000 women and men who work in every sector of the economy: public sector workers and private sector workers. I'm a construction worker, as some of you know.

I'm here to talk about a very troubling aspect of what the Liberal government of Ontario is choosing to do in March 2011, and that is to strip a basic labour right from thousands of Toronto citizens and residents, masking the stripping of that right in the words "essential services," when the broad definition accepted in Ontario jurisprudence is that essential services are only required in the case of public safety and public health being jeopardized.

It's ironic that the labour movement in this city traces its roots back to 1872, when 24 union printers working for The Globe newspaper—owned by George Brown, who I believe was a Liberal—exercised their right to strike in order to win a shorter workday. Mr. Brown had them charged and thrown in jail for exercising that right. Some 10,000 Torontonians packed the streets at a time when the entire city population was 50,000, most of whom were children, and demanded the freedom of those 24 printers. A guy called John A. Macdonald, a Conservative, promised that if the people of Canada elected

him, he would bring in trade union laws that would allow workers to organize, to bargain and to strike. He was elected subsequently and the laws changed. Since then, over a century ago, workers in this province have had the right to strike as a basic civil right.

Not all workers have had the right to strike. For decades and centuries, people who went to work were held in indenturement by their employers, to say, "You do not have the right to withdraw your labour; you serve here at my pleasure and my pleasure only."

It wasn't until 1806 that Great Britain decided that it was wrong to have slave trading as a commercial practice in the empire, and they decided to abolish slave trading. It was interesting that in May of that year, a petition went to the House of Lords signed by the 100 richest cotton merchants in Manchester demanding that that bill be stopped because they needed the commercial freedom to have slaves picking cotton in the southern States. Two days later, a petition containing 3,000 names of ordinary working people and faith leaders from Manchester arrived, demanding that those working people, called slaves, be given their freedom.

I mention that because it's part of a history of how society looks at people who work for a living. It's interesting that the labour movement in Jamaica doesn't trace its history to an event like what I described a few minutes ago; it traces its history to the slave revolts, because working people rising up against something that was wrong is the history of labour.

Of course, the Brits, once they outlawed slave trading, had to find another way of having labour that had to do what employers wanted, and that was called indenturement. Most of the folks of South Asian heritage who were in the West Indies, and many of British and Scottish heritage who came to this country at first, were indentured servants. Their employer could refuse to allow them to do anything. They could not withdraw their labour until indenturement was gotten rid of.

Why do I talk about these broad issues? Because the Liberal Party of Ontario and the Liberal Party of Canada talks about itself as a leader in civil rights. Your government would never dream of stripping civil rights that women have fought for and won, that people of colour have fought for and won, that LGBT communities have fought for and won. But today you say it's all right to strip the rights of working people. I ask you to think long and hard about that.

The Supreme Court ruled just a few years ago, on June 8, 2007, in the document that I provided you with, where a government of the day, and it was actually a Liberal government in British Columbia, decided to strip the rights of working people around collective bargaining. Because it was the government, it could do so, and those people were indirectly working for it. The Supreme Court finally overruled that Liberal government's decision to strip workers of their rights.

It's ironic, as somebody who has spent a lot of time in picket lines and demonstrations in front of this building, during the Harris government, side by side with some of

my friends who now find themselves in the government benches, railing against the injustices of the Harris government—the Harris government never stripped the right to strike from transit workers; yet your government is choosing to do so. You're going to come back to the trade union movement in October and say, "Help us, because we're the friend of labour." How can a friend strip your basic civil rights and expect to come back and say, "Help us"?"

At the same time, this government has said, "We're going to move to binding arbitration." Every day in the leading newspapers that we read, there are articles by Bay Street lawyers and lobbyists and politicians saying, "Arbitrators must have their hands tied with the ability to pay." This government wanted workers to have their wages frozen for two years, while giving a \$2.4-billion tax cut to corporations, even though inflation has increased 2.4%. You wanted workers to eat that, while giving a huge benefit to Bay Street.

The question that we ask as a labour movement is, you've deemed that transit workers—and if I have a moment, I'll quote later on from the minister when he introduced this—are essential, because people will be inconvenienced if they withdrew their labour, as is their basic labour right. Who's next—teachers, child care workers, hydro workers?

I'll leave you with this thought: I was part of a delegation that went to the People's Republic of China in December, at the invitation of the labour movement there. We stopped in Hong Kong first and talked to some of those brave democracy activists in Hong Kong, some of whom had been in jail in China for standing up for labour rights. They said, "When you go there and you meet with some of these people who belong to the official union in China, ask them the question. The litmus test is not, 'Can you belong to a government-sponsored union?' but, 'Can you strike?'" Exercising your right to strike is a litmus test of a free and democratic society and a free and independent union movement.

1630

My friends, in March 2011, the Ontario Liberal government will fail that litmus test for Ontario workers, for men and women who provide services to 1.5 million Torontonians a day. "Because it may inconvenience us," is no reason why you should take away our basic labour rights, anymore than you would dream of taking away the basic civil rights of Ontarians.

The Chair (Mr. David Orazietti): Thank you for your comments.

Mr. Kormos, any questions?

Mr. Peter Kormos: I'll surrender my time to the Liberal government caucus. Should they not use all of it, I'll pick up the remnant.

The Chair (Mr. David Orazietti): Ms. Mangat, go ahead.

Mrs. Amrit Mangat: I understand that there has been a history over the last 10 years that approximately 80% to 81% of collective agreements have been resolved through negotiations without going to binding arbitration. Can

you shed some light, based on your experience, on the outcomes for workers of binding arbitration?

Mr. John Cartwright: It's interesting, because one of the reasons that TTC management originally said they don't want binding arbitration is because arbitrators, at this point, provide workers, in some cases, with rulings that defy the government; that say, "Your attempt of a wage freeze is bogus. There's a cost of living to be looked at, and there are productivity interests to be looked at." That's in today's atmosphere.

The same loud Bay Street voices that have urged you to strip the right to strike away from workers today will urge you tomorrow to change the basis of arbitration so that arbitrators are restricted by inability to pay when the government chooses to have a tax freeze, for instance, as the Toronto government did just before they came back to you asking for more money, or chooses to give away \$2.4 billion to corporations and then says, "We don't have money." There's a danger that arbitrators' parameters of making rulings would be changed by you or future governments.

The point is, once you take away a right such as this, it's gone forever. If you lose to the Hudak government or if they're a minority government in the future, those workers will not get their rights back if arbitrators start to bring in arbitrations that cheat workers of what they need.

Ms. Mangat, if your rights, as a woman, some of which have only been won in the last 30 years—because you remember, 35 years ago a woman had to have her husband's signing authority to have a mortgage or to take out a credit card. If somebody said to you, "We're going to take that away just for a little while, but we think you'll be all right because you can use cash," you would never agree to that.

If people's right to go to the Human Rights Code and talk about discrimination—as in the 1940s, when the Toronto labour committee on human rights did time and time and time again before we forced this government to have a Human Rights Code. If a restaurant said, "We'll let you in today, but perhaps not tomorrow," you would not agree to that arbitrary and occasional offering of your rights as a human being. Why would you say that workers should agree to an arbitrary and occasional exercise of rights as Ontario residents?

Mrs. Amrit Mangat: When it comes to the TTC, there has been repeated back-to-work legislation for binding arbitration. Don't you think that this legislative framework provides certainty to the parties?

Mr. John Cartwright: No. In the same way that we had indenturement when people were brought to Canada or the West Indies, and your certainty was seven years that you could not leave the master or you'd be thrown in jail—that was a kind of certainty? We're not interested in certainty that strips workers of basic civil rights.

The Chair (Mr. David Orazietti): Mr. Hillier, go ahead.

Mr. Randy Hillier: You spoke much about and referred to the Liberal government as a defender of civil

liberties. It just confuses me how you could say that after their role in the G20 last year, with the suspension of civil liberties in downtown Toronto. I'm a little bit confused that you see them as a defender of civil liberties.

I would like to ask this question: Do you recognize or see any difference between the right to strike in the private sector, where you can access services from other providers, as compared to the right to strike with a monopoly service provider?

Mr. John Cartwright: More and more in our world, private sectors have become monopolies themselves in their own way. We've seen what happens when you try to open up something that's not a Microsoft product and you get chewed out by your own computer. More and more we see the provision of services by global multinationals like Suez or Veolia, which have virtual monopolies, massive tax subsidies and outsourcing.

The right to strike, for instance—David Caplan's bill originally was the right to strike of all transit services. In York region, some of those are provided by global monopolies, ripping off the taxpayer, ripping off the public and ripping off the workers. Yet you would say that maybe that right to strike should be taken away even though they're working for a private company.

Mr. Randy Hillier: So do you not see any difference between the private sector, where there is access to other services or other providers, as compared to a monopoly public sector provider?

Mr. John Cartwright: No. If you go back to my basic assertion that labour rights are basic civil rights—you don't take away somebody's civil rights by saying, "We don't like your kind in this restaurant. You can go to three more other restaurants." Your civil rights are basic rights as a human being.

One of the disturbing things about the 21st century is how the wealthiest corporations, many of whom donate to your party and want your party to be elected so they can continue the war on labour that they had during the Harris times, want to strip people's rights.

And sadly, yes, a Liberal Party that says it has a proud record of civil rights is now losing that legacy because it's only workers' rights they're taking away. That is very, very disturbing. I'm glad you brought that up and asked me to reinforce that point, because it is very disturbing when a government that says it cherishes human rights walks away from human rights when they are workers' rights.

The Chair (Mr. David Orazietti): Thank you, Mr. Cartwright. That's time for your presentation.

Mr. John Cartwright: Thank you.

CITY OF TORONTO

The Chair (Mr. David Orazietti): The next presentation is the city of Toronto, Karen Stintz. Good afternoon. Welcome to the Standing Committee on General Government. As you're aware, you have 15 minutes for your presentation. Any time you leave will

be divided among members for questions. You can start by stating your name and proceed when you're ready.

Ms. Karen Stintz: My name is Karen Stintz. I'm a city councillor for ward 16 and chair of the TTC. I want to thank you very much for inviting me here today to give a presentation on the city's position and why we think it is so important that Bill 150 be passed.

I think it's important to consider the essential service legislation from the perspective of those who rely on the TTC every day. If you can't get to your job or you can't get to school or you can't get to where you need to go, it's not just an inconvenience, it's a major disruption of your life.

The people of Toronto rely on the TTC to get to where they want to go. The reality is that 25% of Torontonians rely on the TTC to get to work every single day; 25% of Torontonians don't actually own a car. The TTC is an essential part of their daily lives.

The issue at hand is the fact that the residents of our city see a disconnect between the technical definition of essential service and their definition of essential service. They believe that their ability to access public transit to do their work and to fulfill their daily duties, obligations and responsibilities should not be compromised, and, if it is, the social and economic consequences are too high and in fact are estimated at \$50 million a day.

I know that my friend Mr. Kinnear was here earlier to suggest that perhaps that number was not correct, but in fact that was the number that's also been verified by a document that his union commissioned from Marilyn Churley, which estimated that the TTC is worth nearly \$12 billion a year. Math was not my first subject at school, but if you take \$12 billion a year and you divide it by the working days in the year, you get about \$50 million a day. Those are her numbers based on the study that was commissioned by his union. Again, I can submit this document for evidence as well.

There was another notation here that in the GTA, an average increase of only 12 minutes to commute to work would mean an extra \$28 million per day in congestion costs. These are not small costs; these are significant economic costs to our city. These are not our numbers; these are their numbers.

There is a new public perception. The 39-day strike recently experienced by Toronto residents has made them aware of the impact that labour disruptions have on their day-to-day lives. It is true that residents can find alternatives for garbage collection; they cannot find alternatives for the TTC. The people of Toronto want protection, and they have looked to us, as their politicians, to address their concerns. We have an obligation to respond.

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Are their concerns valid? I believe they are, and as Chair of the TTC, faced with a \$2-billion state of good repair backlog and significant operating budget challenges, I can tell you that the commission has financial pressures to which we need to respond. While the commission aims to address our problems creatively and in partnership with those who deliver the service, we all know that there will be tough decisions ahead.

I'd also like to bring to your attention that there are 22 days remaining in the current collective agreement, and that we are working with the union in the hopes of reaching a negotiated settlement. The city of Toronto has a history of reaching a negotiated settlement with our unions even when they have an essential service designation. We have collectively done so with two firefighter contracts in the last seven years. I believe we can work collaboratively towards another negotiated settlement.

But if we're not able to, and reaching that settlement proves more difficult and the commitment of the union not to strike is no longer honoured, then we will have 1.5 million daily riders who will not be able to get to where they need to go. That's 1.5 million daily riders, and these are our residents. And if history is any guide to the future, as was stated here, council will be back requesting your assistance in legislating workers back to work as we did in 1999, after two days of a walkout; as we did in 2006, after one day of a walkout; and as we did in 2008, after two days of a walkout. So, to suggest that there's an unfettered right to strike I think does not reflect the reality that we all know we have to deal with.

If we're not able to reach a negotiated settlement and if this essential service legislation is not passed and the membership chose to exercise their right to strike, my guess is we would be back again and we would ask that our unresolved issues be forwarded to an arbitrator. That's exactly what we're asking for today.

In light of these realities, I respectfully ask that you support the Toronto city council's request to make the Toronto Transit Commission an essential service. We acknowledge that this is not a perfect solution to the problem before us; we know that. We know what we're asking you to do is difficult. We know that sometimes when we go to arbitration, we don't get exactly what we want. We know that we have to work in good faith with our parties to negotiate a settlement so we don't rely on that course of action. We know that we are asking to potentially remove a fundamental right of the union, but as I suggested, there is no unfettered right to strike. It doesn't exist now.

I would like to be clear that I make my request because it reflects the wishes of the people we serve collectively and our collective commitment to service excellence of our city's public transit system. We know at the commission we have many issues that we need to tackle. We need to tackle cleanliness, service improvements and implementing conveniences such as the electronic fare card, but job one, our priority as well, is making sure we have continuity of service so that people can rely on our service to get to where they need to go. Our customers want a reliable service and a service that they can depend on. That isn't too much to ask. They have asked it of us and we're asking you to help us deliver it to them.

In closing, there is broad support for making the TTC an essential service. I know the government, your government, fully appreciates the economic importance of keeping our city moving and fostering a reliance on

sustainable transportation, and these ideas, again, are supported by a special report written by Marilyn Churley which speaks to the environmental, economic, social and health contributions the TTC makes to the city and the region.

Again, I thank you for your time today and for inviting me to speak to your committee, and again, I request your support in making the TTC an essential service and passing Bill 150. Thank you.

And I just would like to make a small note today that I'm joined today by my colleague Councillor Cesar Palacio, who has been instrumental in shepherding this initiative forward.

The Chair (Mr. David Oraziotti): We've got a few minutes for questions. Mr. Balkissoon, you're first.

Mr. Bas Balkissoon: Thank you, Mr. Chair, and nice to see you here, Karen.

Ms. Karen Stintz: Hi, Bas.

Mr. Bas Balkissoon: Welcome.

Ms. Karen Stintz: Thank you.

Mr. Bas Balkissoon: This request of the province started as a motion at the TTC. Can you share with the committee what the TTC and the council consider as the impact of the TTC work stoppages to the city and the people of the city?

Ms. Karen Stintz: The economic impact was estimated at \$50 million a day, recognizing that there is extreme disruption to the local economy and to the residents and riders of the city when they are not able to rely on the TTC to get to where they need to go.

Mr. Bas Balkissoon: Do you honestly believe, as you stated, that you're acting as a truly elected person on behalf of the people of Toronto and that this is what the people of Toronto want?

Ms. Karen Stintz: Absolutely. The people of Toronto made it clear in the last election that they wanted the TTC to be declared an essential service. We took the vote to the commission; we took the vote to council. The vote was not close; the vote was decisive. We believe we're acting in the public interest in asking the province to assist us with this legislation.

Mr. Bas Balkissoon: So then you truly believe, as an elected person, that you're acting responsibly?

Ms. Karen Stintz: Absolutely. Thank you.

Mr. Bas Balkissoon: Thank you, Mr. Chair.

The Chair (Mr. David Oraziotti): Mr. Clark, go ahead.

Mr. Steve Clark: Thank you, Mr. Chair. I know Mr. Hillier has a question, but I would like to ask you if we could get a copy of Marilyn Churley's report.

Ms. Karen Stintz: Absolutely. I didn't make 25 copies; I apologize. But I can leave this with you.

Mr. Randy Hillier: Thank you very much, Karen, for being here today. The only piece that I have some concern with, with this legislation, is on the ability to pay in the arbitration process. I'm just wondering if you've had discussions with the minister on how that ability-to-pay clause will come into play with the city of Toronto. We know that, historically, there long have been prob-

lems with the arbitration process, up to years and years in rendering a decision and very little regard or respect for that ability to pay.

Ms. Karen Stintz: To be honest, recognizing that that is a concern that's shared by the city as well, we have not had those discussions with the minister at this time.

Mr. Randy Hillier: All right. Thank you.

The Chair (Mr. David Orazietti): Mr. Kormos, a question?

Mr. Peter Kormos: Thank you, Chair. Thank you, Ms. Stintz. Now look—you and Mayor Ford and I disagree about Bill 150, and that's okay.

Ms. Karen Stintz: That's okay.

Mr. Peter Kormos: I know you want to be fair and accurate, which is why I noticed on page 2, under "Broad Support," you write, "There is widespread support of making the TTC an essential service:"—colon. In the second paragraph, it says, "These ideas are supported by ... Marilyn Churley." She's a justice of the peace. She has to stay out of the political fray. Are you telling us that Marilyn Churley supports Bill 150?

Ms. Karen Stintz: No, I would never make that claim, but she did write a report indicating the importance of the TTC. I do thank you for that clarification.

Mr. Peter Kormos: But was it fair to put her name and her report under the box that's titled "Broad Support," implying broad support for the bill? Come on. Was that fair?

Ms. Karen Stintz: Fair enough. Thank you.

Mr. Peter Kormos: Was it fair, though?

Ms. Karen Stintz: I believe that Marilyn Churley wrote a report—

Mr. Peter Kormos: Was it fair to put her name under the box called "Broad Support"? Come on, Ms. Stintz. That wasn't fair at all.

Ms. Karen Stintz: Thank you.

The Chair (Mr. David Orazietti): Okay. The question has been asked. Thanks.

There's just one comment that I'd make with respect to the report. If you're going to table a report, rather than table it with one member, if you email or leave it with the Clerk, then we can get it to all members. Thank you very much for your presentation.

Ms. Karen Stintz: Thank you.

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 2

The Chair (Mr. David Orazietti): The next presentation is from the Canadian Union of Public Employees, Local 2. Mr. Franco? Good afternoon. Welcome to the Standing Committee on General Government. As you are aware, you've got 15 minutes for your presentation. Any time you leave for members will be divided among committee members for questions. Start by stating your name, and you can get going. Thanks.

Mr. Gaetano Franco: Good afternoon. My name is Gaetano Franco. I'm an electrician and I've worked for the TTC for the last 15 years. I am also the president of

CUPE Local 2, representing more than 500 TTC employees, most of whom work in signals, electrical and communications across the transit system.

It may surprise some of you to learn that CUPE represents workers at the TTC. Most of the general public, when they think about unions at the TTC, probably think about the Amalgamated Transit Union. I am pleased to say that we in CUPE salute ATU 113 and their president, Bob Kinnear, for their leadership on this issue, and we stand in complete agreement and solidarity with them and with the International Association of Machinists, IAM, Lodge 235, which also represents some of the workers at the TTC.

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While I begin my presentation by thanking this committee for an opportunity to present our views, I must be straightforward and say to you that there is simply no legitimate public purpose served by this legislation. Why? Members of this committee are fully aware of the voluntary and unconditional no-strike commitment made by all three unions at the TTC.

On February 10, I joined with Bob Kinnear and Brother Paul Mitchell from the machinists' union in a press conference at the Sheraton Hotel, where we made the unconditional public commitment to assure transit users in Toronto of years of uninterrupted service, a commitment put in writing that same day to the Minister of Labour. Rob Ford knows that. Dalton McGuinty also knows that.

So if this legislation is not needed to prevent TTC strikes, then why is it here?

On February 18, John Tory answered that question on CFRB radio. He said, "If this really was about not having a strike, if you think about it for a minute, and if it wasn't about political points or ideology or settling old scores, which it shouldn't be about, then Karen Stintz and Rob Ford should be sitting down day and night with Bob Kinnear to really aggressively explore whether they can work out, say, a three-year or" even a "five-year ... deal with Bob Kinnear.

"He made an unusual opening offer and Dalton McGuinty should be telling Rob Ford and Karen Stintz that he insists they sit down and talk to him about this or at least make every effort before he, Dalton McGuinty, will pass the legislation declaring the TTC an essential service....

"And I think Dalton McGuinty's failure to at least to do that and tell them to sit at the table and talk to Bob Kinnear would suggest he too is playing politics in an election year."

CUPE Local 2 believes that if your concern as legislators is to have a strong and reliable transit system in the city of Toronto, you should not pass this bill, but rather should turn your attention to the real issues of overcrowding and cuts to routes and hours of service at the TTC. Turn your attention to the fact that Ontario embarrasses itself as long as it continues to be the only jurisdiction in North America to refuse operating funding to its largest municipal public transit system.

If, however, Bill 150 is going to proceed, then there are at least two serious problems that I would like to point out and that should be addressed before it becomes law.

First, sections 6 and 7 of the act should be amended to remove the option of so-called “final offer selection” as a method of arbitration. The all-or-nothing, winner-take-all result of this type of arbitration leads to ongoing frustration and anger between the parties and ensures rocky labour relations as one party is deemed the supposed winner and the other the loser. In order to ensure that arbitrated settlements are done on the merits of the issues under consideration and to foster a positive labour-management relationship at the TTC, we strongly recommend deletion of any reference to final offer selection.

The second point: Section 22 of the act requires the minister to initiate a review after five years, but there is no requirement for that review to be provided to any of you as legislators or to be made public. That’s a problem that should be fixed. Given the bill’s potential for damaging labour relations at the TTC, rather than a simple review after five years, it would be better to have a sunset clause so that unless the Legislature itself were to decide otherwise, free collective bargaining would return as the normal state of affairs.

With that being said, we remain convinced that, overall, Bill 150 is unnecessary. It is an attack on the generations-old right to meaningful collective bargaining and it is a politically motivated distraction of public attention away from improving service for transit users.

I’d like to leave you with a little bit of an example, if I could, about how bargaining is going thus far. Long story short, we met with the company only once. We provided our proposal, at which point—this was maybe a 20-minute meeting—they thanked us and offered that they would get back to us in a few hours, when they had a chance to look over the proposal. A few hours later, I received a phone call and what was said was basically, “Thank you very much for the proposal. It’s self-explanatory. We really don’t need any clarification, and we’ll get back to you in a couple of days when we’re ready to start bargaining.”

So I’m sitting at home, waiting for a phone call, and sure enough it came. And I was thinking, “Wow, okay. Here come some dates. We’re going to start the process.” To my surprise, all I received was the information—the heads-up, if you will—that the company, without even meeting with us once to get to the meat and bones of the proposal, had already filed for conciliation. All we did was show them the proposal; that’s it. We haven’t had one minute of conversation on the proposal at all, and they’ve already filed for conciliation.

Just to give you a little, quick overview of our proposal, there are some aspects of it, yes, that speak to monetary issues—very few. There are a few that touch on possible improvements to some medical benefits and certain slight increases we’re hoping for, but that’s a very small percentage. The majority of the package speaks to language change; it speaks to years of grey areas that

have created ongoing labour issues. In the majority of the package, we’re looking for a basic cleanup: wording changes that would lead to, in our opinion, a way of dealing with how an apprentice might feel, or how he may feel if he’s mistreated. Certain things like that do not speak about money.

That’s the conclusion of my presentation, and thank you very much.

The Chair (Mr. David Oraziotti): Thank you for your presentation. Mr. Hillier, go ahead.

Mr. Randy Hillier: Thank you, Gaetano.

First off, I’d like to say that I think your proposed amendment under section 22 is a thoughtful and reasonable amendment. I hope the committee does take it into consideration for a full review, not just a backroom review by the minister of the day.

I want to also just ask you, Gaetano: You essentially referred to this legislation and the need for it as “illegitimate”; I think that’s the word that you used. Do you believe that the electoral mandate by the present mayor and city council, the mandate from the municipal election, is illegitimate and ought not to be considered?

Your comments?

Mr. Gaetano Franco: Thank you for the question.

I’m not trying to say that what Rob Ford is doing, in his opinion, is wrong. I know that in his belief, he’s trying to solve a problem. The issue I have is that the resolution he came up with is not going to solve the problem at the TTC.

Historically, bargaining happens 365 days; it’s not just when we’re negotiating a contract. I believe, as a union leader, that myself and our union have a very good relationship with the TTC in terms of labour issues that come up at any time. The only real way to solve those problems is to allow both sides to talk freely and not have in the back of their minds that this is pointless: “We’re not going to get anywhere. We’re not going to agree to anything. We’re just going to send everything over to an arbitrator who probably has no idea how the TTC runs and what its real issues are.” And unfortunately, my experience so far with bargaining is telling me that that’s exactly what’s going to happen. It’s just going to be fast-tracked through, somebody who has very little knowledge about the inner workings of the TTC will make a decision, and both sides could be very unhappy with that decision, whatever it may be. That could lead to future, ongoing issues. The real issues here can be solved with a little more funding.

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The Chair (Mr. David Oraziotti): Mr. Franco, I’ve got to stop you there because we need time for other members. Mr. Kormos, go ahead.

Mr. Peter Kormos: Thank you kindly, sir. Tell us a little bit about the minister’s consultation of CUPE, Local 2.

Mr. Gaetano Franco: I never actually had a chance to meet with the Minister of Labour. I met with some of his staff.

Basically, they were looking to us for possible answers as to, if it went to arbitration, what type of arbitra-

tion would we prefer. It was very difficult to answer that question. We just simply responded, as I've said today: I think that both sides clearly do not ever want to strike.

It's very difficult for me to tell my members that you're going to be staying at home, walking a picket line and not making any money for your family. It is very hard. The way it's been done so far, in the past, with it hanging over your head that you cannot just simply strike on a whim, motivates us to make possible concessions, to possibly come to some kind of reasonable agreement on both sides. To avoid a strike at all costs is the only meaningful way we have fair labour union relations.

Mr. Peter Kormos: When this legislation passes, what is it going to do to the morale of TTC workers, whether they are CUPE members or International Association of Machinists or ATU?

Mr. Gaetano Franco: I feel it would absolutely cripple it. We'll be bound by an agreement that somebody forced upon us, not something that I could say to my members, "This is a fair deal. We should accept," and that's not always easy as well.

The Chair (Mr. David Oraziotti): We need to move on. Thank you, Mr. Kormos. Mr. Qaadri?

Mr. Shafiq Qaadri: Thank you, Mr. Franco.

At the outset, of course, we on the government side appreciate your deputation, not only on behalf of CUPE, but your written submission, and in particular the 500 individuals you represent who are directly implicated in the TTC.

I wanted to just speak a little bit about your own experience with arbitrated settlements. As you know, province-wide, CUPE represents something on the order of 45,000, maybe 50,000, workers, and in many different workplace settings. As a doctor, I know first-hand, for example, that in hospitals and long-term-health-care facilities, they are bound by compulsory arbitration under the Hospital Labour Disputes Arbitration Act. Of course, that's the model upon which we have crafted the Toronto Transit Commission Labour Disputes Resolution Act, 2011, that's before us.

My question is, because you spoke repeatedly about arbitrated settlements and your experience, what has CUPE's experience been under that particular regime for arbitration?

Mr. Gaetano Franco: It's hard for me to speak on arbitrated settlements in the medical sector. I have absolutely no experience there. It's unfair for me to speak on that.

I can only keep reiterating the point that, as a firm union leader, I really believe the only way to allow a fair agreement that will be followed and trusted for three years is to allow both parties to have their fair, set-out system of bargaining, not to have a third party come in and make a forcible agreement upon them. I can't stress that enough.

Mr. Shafiq Qaadri: I appreciate, Mr. Franco, that of course you represent a certain subsector of CUPE.

The Chair (Mr. David Oraziotti): Very briefly.

Mr. Shafiq Qaadri: Would you have any idea or any sense of the number of labour agreements that are

resolved at the bargaining process and do not actually go on to compulsory binding arbitration in CUPE?

Mr. Gaetano Franco: Historically, at the TTC, Local 2, outside of the monetary issue of would they get 3% or 2% or 1%, to be quite frank—outside of that item, which historically we've gone with passing that over to ATU, Local 113, we've been very successful in negotiating a contract each and every time on our own without it being forced on us, sir.

Mr. Shafiq Qaadri: Thanks for your deputation.

Mr. Gaetano Franco: You're welcome.

The Chair (Mr. David Oraziotti): Thank you very much.

CANADIAN AUTO WORKERS

The Chair (Mr. David Oraziotti): The next presentation is the Canadian Auto Workers' union, Ken Lewenza. Good afternoon. Welcome to the Standing Committee on General Government.

Mr. Ken Lewenza: Thank you very much. Let me introduce myself: I'm Ken Lewenza. I'm the president of the CAW, representing 200,000 members throughout Canada. Approximately 120,000 of those are in Ontario and approximately 15,000 of those are directly represented in the Toronto metropolitan area, so we have a significant input in this particular bill. To my right is Jenny Ahn, who lives in Toronto, recognizes the importance of transit in Toronto and has been a huge advocate for public transit in this community. She's the director of our political action and mobilization team in the CAW. The both of us would be more than prepared to answer any questions following my presentation.

Let me begin by saying that I'm not going to read the presentation. We put a lot of detail into our presentation on the question of collective bargaining rights, levelling the playing field, the history of collective bargaining, the history of essential services, the kinds of desires of the labour movements, the victories and the setbacks. All of those particular issues are in the presentation, and I would plead with you, prior to going into the Legislature for the final vote, to take a look at our report in detail and consider it significantly.

Let me begin by being respectful in my remarks. I want to direct it particularly to the Liberal Party. I recognize, as the leader of the CAW, that the Tories, the Conservative Party, do not represent the interests of workers. I recognize that. I experienced the Mike Harris days. I experienced a lot of challenges during the Mike Harris days. In fact, during the Mike Harris days, the reality was there were more days of work stoppages than at any time in the history of the province of Ontario, if you include the Days of Action and others. I understand where the Tories stand and their consistency against the labour movement.

I understand the New Democrats' position. The fact of the matter is, when the New Democratic Party was in power, they did introduce legislation to balance and level the playing the field in terms of bargaining and issues

that were important to the labour movement—again, maybe not to the degree that we wanted, but they did their work in terms of representing the interests and trying to find a balance, not just within the labour movement, but balance during the course of negotiations. I recognize where they stand.

The Liberal Party, quite frankly, is a little bit more challenging for us. I have personally joined many of my CAW colleagues and I have lobbied the provincial Liberal government over the last two terms to level the playing field; to introduce anti-scab legislation, which we believe would be a deterrent to extended strikes in the province of Ontario. If we had anti-scab legislation, does anybody honestly think that we would have a strike in Sudbury that was in excess of a year by the United Steelworkers of America? Does anybody honestly believe that the Sears store just down the street from this community would be on strike for over a year if we had anti-scab legislation? The answer is no, because at the end of the day, with anti-scab legislation, it really does force both parties to come to a conclusion. That's what I've heard more than not during the legislative hearings on this particular bill.

The inconvenience of the ridership of transit: We understand the inconvenience. We understand that when a work stoppage occurs, there's an inconvenience to somebody. Whether it's in the private sector or whether it's in the public sector, the reality is that somebody is inconvenienced, but that inconvenience, quite frankly, puts significant pressure on both sides, if you bargain responsibly, to get the job done.

The labour movement doesn't look to inconvenience anybody in the general public, nor do we want to inconvenience our members. We don't go out on strike just to go out on strike. In fact, I'm proud of the record of the labour movement in the province of Ontario. I'm proud of the significant record of the CAW, where less than 1% of our 2,000 collective agreements result in a strike.

In fact, the two work stoppages that we have today are with limousine drivers here in Toronto. They have been locked out now for over four months. And we have said to the employer, "Listen, you don't respect the union, you don't respect democracy and you don't respect the rights of the workers to make progress in negotiations." Just to give you a small example, do you know what we're asking at the bargaining table? Do you know that when you buy those limousines—again, they kind of sell them to the drivers and lease them out to the drivers. Well, they spend \$35,000 buying those limousines. The owner charges \$40,000 to \$45,000. So we said, "At least charge the driver, for God's sake, what you pay for the vehicle. Let's at least do that." That's one of our reasonable demands, because that comes right out of the pockets of the drivers. We can't get anywhere.

This morning, we're at the Ontario Labour Relations Board, dealing with unfair labour practices. We said, "Arbitrate." We're at a stalemate. Let's try and see if we can settle this issue, because it's an inconvenience to our

members and an inconvenience to those who require limousine services, so obviously we are trying to get the job done.

1710

We recognize the challenges in bargaining. In Chatham today, brothers and sisters, if that's the appropriate and respectful term at this time—20 months ago International Truck said, "I'm laying off the workers. Mr. Lewenza, they are laid off until you come back to the bargaining table and accept the proposal that we have on the table. We don't really need the trucks; we really don't need the workers. But at the end of the day, just go out and do what you've got to do." Well, 20 months later we're still at a stalemate. Hundreds of workers are laid off. Hundreds of people are inconvenienced in the community, and the economic pressure on Chatham is significant as a result of those people not working. So we understand inconveniences.

I want to emphasize, and I guess this frustrates me the most, that when we've talked to the Liberal Party in the last eight years, and we've talked consistently—I've personally asked the Premier of Ontario to introduce legislation to level the playing field—anti-scab legislation, card checks, democratic rights that other provinces and other countries have willingly. He has always said to me, "Ken, labour relations in the province of Ontario have never been better." He has emphasized the fewer strike days under his mandate. He has emphasized that there's no need for change because the labour relations climate has never been better.

Now Mr. Ford gets elected, and I respectfully, obviously, support the fact that democracy worked; he got elected. I wouldn't question that. Mr. Ford sees this as an opportunity, again, on a wedge issue—not an issue of importance; it's not about essential services. Does anybody really think that he cares about 25% of the ridership in the city of Toronto? He sees this as a wedge issue, and the fact of the matter is that there are too many wedge issues in politics today that are hurting the kind of environment that we want for citizens, not only in Toronto but throughout the country. It's a wedge issue.

He introduces legislation and passes it through the municipality. Now the provincial government says, "Jeez, Toronto is a big city. Twenty-five percent of the 1.5 million people in his community need the ridership. We understand that. The timing is probably perfect. We should jump on the bandwagon, make it a wedge issue. Make it an essential service." At the end of the day, quite frankly, that is not the message that the Liberals have consistently sent the labour movement, and in particular the CAW, on multiple occasions when I have talked to several cabinet ministers, including the Premier. If you're going to advocate on one hand that your labour relations climate is excellent, then on the other hand you can't tie the hands of those who are trying to advance the causes of our members.

My last point is—and again, if you see a sense of frustration in me, I apologize, but people get up here, like Councillor Stintz, and say, "We represent the 25% of

people who need essential services. We're here for them. We want to make sure that they get the service. Twenty-five percent of them don't even have a vehicle; they don't even have a car." The fact of the matter is, the labour movement, and again in particular the CAW, has been a huge advocate of good public services. We have been advocates of providing this service in areas that, quite frankly, are underserved today. We have been advocates in terms of people using transit and leaving their cars at home for the purposes of sustainability moving forward. I would prefer that we enhance our public services—transit—in every community in the country versus replacing the pavement every two years because of the increase in cars on the road.

We are an environmentally committed union, we're a socially responsible union, and we talk of the interest of the 25% ridership. We would like to increase that ridership to 35%. We would like to make it more accessible to people not only in this region but throughout the country. We know that's an alternative that has to be looked at more seriously in the future. We have opposed increases to transit for folks. In fact, if I had it my way, quite frankly, it would be free. There would be no obstacles for people to use transit in this community or any other community throughout the country. When people say, "I represent that 25% utilization," I resent that, because without the labour movement, without the progresses, without those trying to advance the causes of those folks who can't afford cars or who choose not to drive a car to work, or for whatever reason they require transit, we are on their side. But when you attack collective bargaining rights, when strikes are limited, that's a problem.

My last point is this—and I'm pleading with you on this. If you do your work on the labour movement, if you take a look at any country that's doing well in terms of eliminating poverty, it's because they have a strong labour movement; because they have free collective bargaining. At the end of the day, through the power of the union, through the power of collective bargaining, we have established a middle class. Each and every time that we go out there and win justice for our members through collective bargaining, eliminating our usage of strikes, then it's in the best interests of the Canadian population and workers, I believe, throughout the world.

When I take a look at what's going on in Egypt, when I take a look at what's going on in Libya, when I see people inspired, fighting for democracy, fighting to level the playing field, fighting to have a voice in what kind of country they want for themselves and their families—that should be inspiring us. And here we are in Ontario, attacking the basic rights that made progress for workers. I resent it.

I say to my Liberal friends—and I do respectfully say "Liberal friends"—this is wrong: wrong time, wrong opportunity and wrong-headed. I would ask the Liberal Party to reconsider their support for this bill.

The Chair (Mr. David Orazietti): Thank you. We've got a brief opportunity for some questions. Mr. Kormos, you're up first.

Mr. Peter Kormos: I defer to the Liberals.

The Chair (Mr. David Orazietti): Mr. Qaadri, you're up briefly.

Mr. Shafiq Qaadri: Thank you for your deputation on behalf of the CAW.

There was a similar agreement the CAW came up with called a Framework of Fairness—I believe it was with the CAW and Magna International—in which a similar regime, framework, constraint, if you will, was put in place; specifically, that bargaining impasses would be resolved by a process of arbitration. As well, the right to strike—as you said, a fundamental right—was prohibited. I'd like you to share with the committee what your experience and your workers' experience has been with that particular framework and regime.

Mr. Ken Lewenza: Magna is the largest auto parts manufacturer in Canada. They're mainly non-unionized. There has been a total—I don't want to use the term "war"—difference of opinion for the last 20 years on our organizing attempts. We've put a lot of resources in, and Magna has obviously put in significantly more resources than we have to establish an anti-union culture. But over the last few years, Magna and the CAW have come to the recognition that the money we're spending in terms of challenging each other to allow the workers democracy makes no sense. So we agreed that Magna would give us access—not interfering with us—to go the membership and ask the members whether they would democratically decide to join the union, providing we bargain them a collective agreement. Everybody forgets that. The Framework of Fairness agreement says that we go into Magna in the units that we mutually agree with and bargain a collective agreement. If the members ratify the collective agreement, it's accepted. Then, once they're in the union, any collective agreement after that which falls into dispute would end up in arbitration.

Again, that's building a relationship, that's building trust with each other—recognizing that Magna is a significant player in the auto parts sector and ignoring them would not be in the best interests of the other auto parts workers, as we try to level the playing field with auto parts manufacturers throughout the world. So the intent of that is to make sure that other auto parts companies don't have a disadvantage or an advantage over Magna as a result of a union.

The Chair (Mr. David Orazietti): Mr. Hillier, go ahead.

Mr. Randy Hillier: Thank you for being here today. I can understand why you're frustrated. This bill indeed must be upsetting and troubling to you, especially after the CAW contributed a couple of hundred thousand dollars to the Working Families Coalition, the political arm of the Liberal Party. You mentioned that you're lobbying and trying to seek influence and actually create legislation for the Liberal Party for this Legislature. I can understand that you're upset with the Liberal Party disregarding all the contributions and all your efforts in the past—and future efforts—with the Working Families to attack the Tories, as you did earlier.

So I just want to let you know that I understand why you would be upset and troubled with this.

Mr. Ken Lewenza: I'm not upset. We joined with several coalitions in the best interests of our members and the best interests of the province.

By the way, some of the Tories are in our coalition—blue Tories, not Tories like you.

The Chair (Mr. David Oraziotti): All right. On that note, we're done, and—

Mr. Ken Lewenza: No—God. Come on, I'm ready to roll here.

The Chair (Mr. David Oraziotti): I get that sense. Thanks for your presentation. We appreciate you coming in today.

That completes the submissions for today, and we're adjourned, committee.

The committee adjourned at 1720.

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of Ontario**

Second Session, 39th Parliament

**Assemblée législative
de l'Ontario**

Deuxième session, 39^e législature



**Official Report
of Debates
(Hansard)**

Monday 21 March 2011

**Journal
des débats
(Hansard)**

Lundi 21 mars 2011

**Standing Committee on
General Government**

Toronto Transit Commission
Labour Disputes Resolution Act,
2011

**Comité permanent des
affaires gouvernementales**

Loi de 2011 sur le règlement
des conflits de travail
à la Commission de transport
de Toronto

Chair: David Orazietti
Clerk: William Short

Président : David Orazietti
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENT

Monday 21 March 2011

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Lundi 21 mars 2011

*The committee met at 1404 in room 228.*TORONTO TRANSIT COMMISSION
LABOUR DISPUTES RESOLUTION ACT,
2011LOI DE 2011 SUR LE RÈGLEMENT
DES CONFLITS DE TRAVAIL
À LA COMMISSION DE TRANSPORT
DE TORONTO

Consideration of Bill 150, An Act to provide for the resolution of labour disputes involving the Toronto Transit Commission / Projet de loi 150, Loi prévoyant le règlement des conflits de travail à la Commission de transport de Toronto.

The Chair (Mr. David Orazietti): Good afternoon, everyone. We'll get started. Welcome to the Standing Committee on General Government. We're going to be continuing hearings on Bill 150.

ONTARIO FEDERATION OF LABOUR

The Chair (Mr. David Orazietti): Our first presentation is the Ontario Federation of Labour, Sid Ryan. Good afternoon, Mr. Ryan.

Mr. Sid Ryan: Good afternoon.

The Chair (Mr. David Orazietti): You've got, as you know, 15 minutes for your presentation. Any time that you don't use will be divided up among members for questions. You can state your name and start when you're ready.

Mr. Sid Ryan: Thank you. My name is Sid Ryan; I'm president of the Ontario Federation of Labour. Thanks for the opportunity to speak to you today.

However, I must tell you that we do not consider these hearings to be legitimate. By that I mean, if you take a look at the Webster's dictionary, it says it must conform to recognized principles or accepted rules and standards. Truth would be a recognized principle.

The provincial government has fabricated the need for this legislation and based its rationale on—excuse me, Chair, would you like to listen?

The Chair (Mr. David Orazietti): Yes, I'm listening. Go ahead.

Mr. Sid Ryan: The provincial government has fabricated the need for this legislation and based its rationale on layers of lies that are contained within the bill.

Equally alarming, it has manufactured a crisis where none exists and tries to resolve it with the use of legislation that removes the fundamental rights of 10,000 workers. No government, ever, should take lightly the undoing of legal protections and long-standing processes. These have been developed in the context of more than 100 years of social, political and economic history and represent cherished principles and vital safeguards against the misuse of power.

You already know, or ought to know, that your actions will be construed as a violation of international law. I call your attention to the United Nations' International Labour Organization's convention 87, which Canada is a signatory to. In addition to prohibiting the removal of the right to strike for the reasons stated by the government, the convention also says that metropolitan transit systems and railways are not deemed to be essential.

The bill also likely violates the Supreme Court of Canada's ruling on the right to collective bargaining. The court ruled that the charter's protection of freedom of association must provide "at least the level of protection" as afforded by the ILO convention to which I have just referred.

We believe that government's specious rationale laid out in this preamble is part of the reason that it will be found to be in violation of the charter, and make no mistake about it: It will be challenged.

The preamble of Bill 150 says the need for depriving workers of the right to strike arises from "serious public health and safety, environmental, and economic concerns." The ATU has pointed out to you that the City of Toronto 2008 staff report says just the opposite: "The Toronto Fire Services, Toronto Emergency Medical Services and the Toronto Police Service have each provided their assessment regarding the impact of a strike at the TTC on their ability to effectively respond to emergencies. Each service has reported that there has been no noticeable effect upon their response times or ability to respond due to a strike by TTC employees and the interruption of TTC services."

The onus is on the government to substantiate its claims that such profound interference with workers' fundamental rights is necessary. Where is the evidence? There is no data and there are no examples of public health being compromised by a TTC strike. There is no economic or environmental evidence.

Bill 150 raises numerous questions, but the most fundamental one, I think, is whether any government

should be permitted to deny fundamental rights to its citizens on the basis of electoral considerations, because that is the motivation for Bill 150. The Liberals are attempting to shore up votes for the October election by courting Ford's electoral base. In February, the city refused the voluntary and unconditional no-strike commitment made by all three unions at the TTC. Ford wants confrontation, perhaps in a bid to construct a media image of himself as another Mike Harris, or maybe he's simply giddy with new power that he's unused to. Whatever his motivation, it is precisely this excess of power that the law was created to prevent.

Instead, the province's collusion with Ford has already impeded progress in negotiations, and this is unforgivable because the economic security of thousands of workers and their families is at stake. CUPE Local 2 president Gaetano Franco, whose 500 members work in signals, electrical and communications across the transit system, described to you the completely disrespectful response from the city after submitting the union's proposal. He was sitting at home waiting for bargaining dates and when he finally received the city's call, it was to tell him that they had already filed for conciliation without one minute of conversation on the particulars of the proposal.

Obviously, the Premier can do anything he wishes with respect to his party's election strategy, but what he cannot do is subvert the law and what he should not do is to join with Ford in vilifying unions and workers. The Premier parlayed the years of labour strife with the Harris Conservatives, the worst era in labour relations, into a win for his government. Bill 150 will undo all of this progress.

The labour movement has a long history of fighting for public transit and public services—the rights of all people, unionized or not, to have access to transit, housing, child care, health care, education and pensions, the very services and opportunities that millions of citizens take for granted every day. We have fought for these services on behalf of all Ontarians and many of these gains have been made because of unimpeded collective bargaining, and that includes the right to strike. That's our history.

What's the government's record? Ontario is the only jurisdiction in North America that refuses operating funding to its largest municipal public transit system. If the province is really concerned about the people of Toronto, it should think about rectifying this disgraceful state of affairs. The workers are not the problem with the TTC, nor are they in any way the cause of economic difficulties encountered by this province.

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My message to the Liberal government is this: You upend the collective bargaining process at your own peril. Free collective bargaining gives workers a stake in the outcome of bargaining, and without this, you remove the possibility for a smoothly running system. Imposing agreements on workers, who will most certainly take action if their working conditions become deplorable, is not the solution.

Labour peace and productivity are a two-way street that requires both honourable conduct and truth. Neither of these is to be found in Bill 150 or in this government's initiative. Thank you.

The Chair (Mr. David Orazietti): Thank you very much for your presentation. We've got a few minutes. Mr. Hillier, go ahead.

Mr. Randy Hillier: Thank you, Sid, for showing up today, but I think it would be more appropriate if I turned the questions over. I think you and the government benches would have more to chat about than ourselves.

Mr. Peter Kormos: Chair, I relinquish all of my time to the Liberals here on the committee. I'm going to be delighted to be watching and listening to this.

The Chair (Mr. David Orazietti): Mr. Kormos, thank you.

Mr. Dave Levac: Mr. Ryan, thanks for your presentation and, personally, for your work over the decades for the union movement and organized labour across the province. Thank you.

I'm a little curious: Can you share with me an opinion on any kind of legislation, even after a strike, where we've come together as a Legislature—

Mr. Sid Ryan: Where which?

Mr. Dave Levac: Where we've come together as a Legislature and legislated individuals back to work after a strike has started, and if that plays into your decision on this as a pre-emptive piece to that, or whether or not demanding that people come back to work, with legislation, is the same kind of—if you have the same kind of concern in dealing with that kind of legislation?

Mr. Sid Ryan: I think your government has been far too quick to jump into labour disputes. For example, there's a strike that has gone on for two and a half years at ECP in Brantford. I've been bending over backwards with your government to try to get them to intervene in this process so that we can put these workers back to work after two and a half years on strike. I think it's an abuse of the labour code in this province that people are allowed to do that. But yet, when it comes to the TTC, you're only too quick, after a day or two, to jump into the strike and end it.

To me, you're playing politics with the legislation in this province. You're not even-handed about how you apply it. If it's good enough to jump into the legislative process with respect to the TTC workers, how come you're not so prepared to jump in and help out with Vale Inco, which was on strike for a year, with over 3,000 workers up in Sudbury deprived of the ability to earn a living? Or with the strike that's taking place at Stelco today in Hamilton? Nowhere is your government to be seen. You run away from those issues, but yet, when it comes to the TTC and you think there are some votes to be had in an election year, you jump right in.

I don't even blame Ford, by the way, for this. I blame your government. McGuinty is the one who began the whole process after the initial walkout by the TTC workers. He invited this legislation. He goaded David

Miller into bringing this request forward. It all started with the Liberals.

You interfere in the process whenever you think there are votes to be had, but you run away from the issues when there are other big issues at stake, such as the private sector taking advantage of the lax labour laws which your government absolutely refuses—like anti-scab legislation. We've been asking you now for 10 years. You played politics with that as well.

You turned around to the construction industry, because the construction industry puts money into your election machine, and you gave them card-based certification, but you said to the rest of the labour movement—you gave them the finger.

You play politics, sir, all the time with labour legislation and with the lives of workers in this province, and it's got to stop.

Mr. Dave Levac: I appreciate the opinion. Specifically, though, can I drill that down a little bit and then say that inside of that, I still heard that you were not in favour of back-to-work legislation for the TTC, even after they were on strike and we asked them to come back?

Mr. Sid Ryan: I think you should allow the parties to negotiate. You're too quick to jump in and try to resolve something that you think is going to cause you a bit of a political problem.

Allowing the collective bargaining process to take place is the whole idea of collective bargaining. Both parties have got something at stake: Workers lose the ability to earn a living; the employer loses the ability to provide a service and gets some flak from the public. That's what drives the bargain. If you allow the parties to sit down and negotiate, instead of speaking to the employer in the TTC case, they know full well that if the union decides to use their legitimate right to go on strike, within nanoseconds, you're talking about legislating them back to work. Allow the process to work. You wouldn't be in this mess here today if you allowed the process to work.

Mr. Dave Levac: Okay. I appreciate that. How much time do we have, Mr. Chairman?

The Chair (Mr. David Orazietti): You've got about three minutes.

Mr. Dave Levac: Good. Thank you.

You referenced earlier the 2008 situation. You characterize it as the Premier goading Mr. Miller into asking for the type of legislation that you're speaking against right now, if I'm characterizing that correctly, and that Mr. Ford is not really the culprit here; it's the government, because they goaded Mr. Miller into asking for that. The Premier indicated that after the election, if it's asked for by city council, if city council makes the decision that it's looking for that type of legislation, the province would indicate that it would be helpful in seeing that that legislation is available to allow them to declare it an essential service. That's seen by you as simply the government setting that up so that it could happen, as opposed to Mr. Miller asking for it?

Mr. Sid Ryan: Precisely.

Mr. Dave Levac: So the last part about this—and I think you already know those numbers, but I just wanted to make sure that we were aware of them—we're talking about a small fraction of the number of contracts that are, unfortunately, settled by strike. The larger numbers are usually through the negotiation process, which I'm very much in favour of. Is there such a time frame that you can identify for when you believe that a government should intervene, if at all, when we're talking about the negotiation process, or even a strike?

Mr. Sid Ryan: I don't think you should be interfering in the process, period, unless the parties come to you jointly and say, "We're unable to reach some form of a compromise." In that case, then, I would cede the possibility. But if you keep interfering in the process within a matter of days—and the TTC knows from their history that your government in particular is quick to jump into the fray and take away the right to strike from workers and legislate them back to work within days—what's the incentive for the TTC to sit down and sort out that problem? None whatsoever. There's no incentive for them to bargain.

Again, as I say—and it's from your area. You're from Brantford, I believe?

Mr. Dave Levac: Yes.

Mr. Sid Ryan: So you must be quite embarrassed by your own government, to be sitting on the opposition benches and to have some of your voters, who voted for you, sitting out on a picket line for two and a half years. You drive by them every day of the week. I know you've been down to the picket line. You must be wholly embarrassed by your government's inaction to do something about that strike in Brantford, yet here you are, sitting on a committee that's taking the same right to strike that those poor folks down in Brantford have been fighting for, and for their principles, their wages and their benefits—your constituents—and here you are, sitting, wanting to take the right to strike off of 10,000 workers.

You sat there as well and you voted in favour of taking the right to strike away, legislating workers back to work after two days. But after two and a half years of your own constituents being out on strike, you can't even convince your colleagues sitting on either side of you and those around in your backbenches that maybe they should intervene and end that strike, or maybe they should give them some degree of legislation where we stop the scabs going into the plant that's in your riding, day in and day out?

Mr. Dave Levac: I'm glad you mentioned that. The short answer is, I have been working on it.

Mr. Sid Ryan: I'm not asking you that. I'm asking—you ought to be embarrassed. I want to hear you say you're ashamed of those who sit on the benches with you, that they allow workers to be exploited for two and a half years, to be taken advantage of, because of the lax labour laws in this province; that your government hasn't got the guts to stand up and say, "Do you know what? This is wrong. Workers should not be taken advantage of like this in this community or anywhere in this province."

You should be ashamed of yourself. You should be saying to these folks, asking this Chair of this committee, for example, what the hell is he doing to work with you? You keep on saying that you're working with your colleagues. Well, when are you going to get some results and maybe get those people back to work?

The Chair (Mr. David Orazietti): Mr. Ryan, thanks. That's time for your presentation.

Mr. Sid Ryan: Thank you.

Mr. Dave Levac: And, Mr. Chairman, I want to thank the opposition for providing me with some opportunities to present this situation and ask some questions.

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CANADIAN FEDERATION OF INDEPENDENT BUSINESS

The Chair (Mr. David Orazietti): The next presentation: the Canadian Federation of Independent Business. Good afternoon, Mr. Petkov. You have 15 minutes for your presentation. Any time that you do not use will be divided among members for questions. For our recording purposes, just state your name, and you can start when you're ready.

Mr. Plamen Petkov: Thank you, Mr. Chair. My name is Plamen Petkov. I'm the Ontario director of the Canadian Federation of Independent Business. I appreciate the opportunity to address you today in support of Bill 150 and in support of declaring the TTC an essential service. I do this on behalf of CFIB's 5,000 small and medium-sized business members in the city of Toronto. A copy of my presentation is included in the materials that were circulated to you, and the slide deck is on the right-hand side of your kit.

Let me start by saying that having a reliable and efficient public transit system in the city is of utmost importance to small and medium-sized business owners. Our members, their employees and their customers depend on the TTC for their daily commute. It is clear that transit strikes, or the threat of transit strikes, have become unacceptable to Toronto's businesses and residents. One solution, although not a perfect solution, is to declare the service essential and thus eliminate the threat of future strikes. That is what CFIB has been asking for.

On slide number 2 you will find a list of some of our initiatives on this front in the last two or three years, since the last TTC strike. During the previous city administration, we made two presentations to the executive committee of the previous mayor, Mayor David Miller. We delivered action alerts signed by our Toronto members. We also met with several councillors and city staff. We wrote to the Premier and we supported Mr. Caplan's private member's bill last year on this topic.

On slide number 3 we have listed some of the reasons that our members have identified as to why the TTC should be an essential service.

As there is no alternative to the TTC, the impact of a TTC strike to the general public and to the small business community is huge. Let's not forget that the TTC is also

the only affordable means of safe transportation to people of modest income. Unfortunately, those were the same people who were left stranded in the middle of the night when TTC workers walked off the job in 2008 without any prior notice. The residents and businesses in this city were held hostage in a labour dispute they were not a part of, and unfortunately, the same thing happened in 2009 during the 39-day civic workers' strike.

There are also environmental repercussions resulting from a TTC strike, such as increased air pollution from higher levels of car use, not to mention traffic congestion. But most importantly, the city taxpayers cannot afford the financial loss resulting from a TTC strike. The city manager estimated the cost of TTC strikes at \$50 million a day, and it is Toronto taxpayers, both residents and businesses, who have to foot that bill.

Slide number 4: We understand that an essential service comes at a cost. I believe a wide range of estimates has been put forward for an increase in wage settlements and arbitration costs in future contracts. This range, however, is way too wide for us to draw a reasonable estimate of exactly how much extra it would cost the city to make the TTC essential.

What we can do with more certainty, however, is calculate how much the last two TTC strikes have cost the city. Since 2006, there have been three TTC strike days. Using the city manager's estimate, Toronto has lost \$150 million just over three days. So it is clear that keeping the TTC status quo will be far more costly to our city than making it an essential service.

On the next slide: Regardless of which estimates we want to look at, we believe that there is a lot that we could do to keep wage increases and arbitration costs in check. One way to achieve that is to require arbitrators to abide by specific criteria when making an award. On this slide, you see that, overwhelmingly, 81% of our Ontario members support the arbitration with criteria approach. In Toronto, the support is even stronger at 86%.

On the next slide: We're pleased that Bill 150 includes a list of specific criteria for arbitrators, but ultimately, Toronto's fiscal health and the employer's ability to pay should be given a priority and primary consideration. That ability may appear unlimited to some, as the city can pass the cost on to the taxpayers, but let me remind you that over the last decade, Toronto has lost businesses and jobs to the 905 area, leaving fewer taxpayers to shoulder the load.

Comparing public sector wages and benefits with those in the private sector is also a criterion of utmost importance to us. Instead of looking at the highest unionized comparators when negotiating TTC contracts, arbitrators should look at compensation for similar occupations in the private sector requiring similar education and experience, just like it is listed under paragraph 4 in the bill. This will ensure a balance between fair wages and benefits for TTC employees and sustainable costs for Toronto taxpayers.

On the next couple of slides, CFIB used census data to estimate that public sector transit workers in Toronto re-

ceive about 22% more in wages than private sector workers in matched occupations. When benefits are factored in, the difference increases to 47%. So there is certainly a growing need to restrain the increase of average compensation, including benefits, in future wage settlements.

In conclusion, a reliable public transit system is essential to our city to sustain both the local economy and quality of life for residents and visitors. Businesses cannot succeed without a reliable way to get their employees to work, and people will hesitate to live in or visit a city in which they cannot move around freely.

CFIB supports Bill 150 and we recommend that you declare the TTC an essential service to end the threat of future strikes. However, we also caution you that to keep arbitration costs in check, you must ensure that arbitrators abide closely to the defined criteria included in the bill.

Making the TTC an essential service, as I said in the beginning, might not be a perfect solution, but it is certainly a better option than the current status quo.

Thank you for the opportunity to address you today, and I'll be glad to answer any questions that you may have.

The Chair (Mr. David Oraziotti): Thanks for the presentation. Mr. Kormos, you're up first, if you have questions.

Mr. Peter Kormos: No, thank you, Chair. Thank you very much.

The Chair (Mr. David Oraziotti): Mr. Qaadri.

Mr. Shafiq Qaadri: Thanks to you, Mr. Petkov, for your deposition and deputation on behalf of the Canadian Federation of Independent Business. I compliment you not only on your presentation—you've itemized a number of—the logic model, I suppose, of the government with reference to reliable and efficient access. You've touched on a number of the costs. I wanted to just share with you some statistics, some numbers, and perhaps get your own opinion contextualized to your particular sphere of influence, your domain—small businesses.

I bring specifically—you may realize, for example, that the president of the ATU, who testified in that very chair not too long ago, seemed to dismiss the economic and environmental and other impacts of work stoppages in the TTC. Of course, numbers and statistics can be used in various profitable ways, and of course when we're dealing with such large numbers, but I'd like to just share with you a report that was commissioned by a former MPP of this Legislature.

Of course, these figures are for a year-long absence of TTC, so admittedly, hopefully that will never take place, but I think the overall cost estimate of loss was something in the order of about \$12 billion: \$6 billion in economic benefits; \$20 million in terms of environmental energy costs; \$200 million in terms of highway, parking and construction costs; maybe \$300 million—that's of course the financial expense of medical costs and so on. There's a number of other figures that I can cite.

What, to you as a representative of the 5,000 small businesses that you referred to and cited in your initial

deposition, is the lead item? What is the thing that motivates your members? What is the thing that would appear in your own press release, for example, summarizing your deputation today?

Mr. Plamen Petkov: Absolutely. I think there's a number of things. First of all, as I said, what I'm hearing from my members is that every time TTC goes on strike, there is no alternative for that service, period. This is a monopoly service provider. When they're on strike, there is no alternative. You cannot move people around the city. That's number one.

Second, obviously, is the financial loss that results from any strike day. Of course, we can look at different estimates here. I have referred to the city manager's estimates. That's from 2008. I know that Mr. Kinnear, for example, has used other estimates.

1430

The bottom line is, there is a cost associated with every single strike, with every single day that TTC workers are on strike. It's really up to the government to decide which estimate to use. Obviously, I would like to see more detailed estimates on this, but what our members are telling us is that their business suffers financially if their employees or their customers cannot make it to their store or to their plant.

Obviously with environmental aspects, I think a lot has been accomplished on this front by the city of Toronto in recent years. I think the goal was to position Toronto as an environmental leader in North America. I just don't understand why that aspect is not being considered by certain stakeholders in this debate.

Mr. Shafiq Qaadri: I would just bring to the attention of the committee slide 2. First of all, you've mentioned here the deputations that you've made to the city of Toronto—that's particularly for Mr. Kormos—but you refer here to 550 action alerts. What does that actually mean?

Mr. Plamen Petkov: Yes. There is a copy of that action alert in your kit. It's right under the presentation.

That was done in 2008, after the last TTC strike. That was addressed, obviously, to the previous mayor and council. The Premier was copied on that. We sent this to our members. We gathered 550 of these signed by individual business owners. We delivered those to the mayor at that time, and that was during one of our deputations to the executive committee.

Again, that was a huge issue. Immediately after the last strike, our members were outraged. That's why we were able to collect a significant number of these immediately.

Mr. Shafiq Qaadri: I see.

Mr. Petkov, I'd just bring your attention to your elegantly outlined slide 6, in which you speak about the arbitration criteria. Of course, the scope of this particular bill does not address the arbitration system. I was, I guess, encouraged to see that you support, in broad outline, the current framework. Are there any things that you'd like to highlight with regard to arbitration, particularly as it affects your membership?

Mr. Plamen Petkov: Certainly. The reason I included that slide here is just to demonstrate that it's of critical importance to our members to have these criteria embedded in the bill. At the same time, this is the bare minimum. This is a starting point. It is great to have it in the bill, but we also have to make sure that arbitrators actually abide by those criteria.

As I said, the employer's ability to pay is very important; the economic situation in the city, in the province, in the country, is also extremely important. We are facing an arbitration system right now that needs improvement. We are now running a deficit of almost \$20 billion—\$19 billion. We are officially a have-not province. We have the Premier asking for a voluntary wage freeze in the next two years, and at the same time we have arbitrators who are awarding contracts with up to 2% to 3% increases—

Interruption.

The Chair (Mr. David Oraziotti): Can you sit down, please? He's had 13 minutes. He's had 13 minutes. We've got a clock right here.

Interruption.

The Chair (Mr. David Oraziotti): I'm sorry. We're keeping the official time up here.

Interruption.

The Chair (Mr. David Oraziotti): You're going to have to leave if you can't sit down. He's had 13 minutes. You had 15½ minutes, if you'd like to get the facts. Obviously, you want to make a statement while you're here at the committee. Thanks for the grandstanding. We're going to move on. These guys have a question. Thanks. If you can't be quiet, you have to leave.

Go ahead.

Interruption.

The Chair (Mr. David Oraziotti): Yes. He has a question. We're at 13½ minutes.

Interruption.

The Chair (Mr. David Oraziotti): You can leave if you'd like.

Go ahead, Steve.

Mr. Steve Clark: Thank you, Mr. Chair.

What drives me a little crazy are these pie charts. I guess it's just a little bit of an issue with me. Slide 5 talks about, I believe, your membership, not a public opinion poll, so I'd like you just to confirm the numbers, who was involved in the Ontario survey and who was involved in the Toronto survey.

Mr. Plamen Petkov: Absolutely. On the left side of the kit there is the actual question with the background that we provided to members with arguments for and against that question.

In Ontario, we gathered just over 3,800 responses; in Toronto, about 400. The question, like I said—I know I'm running out of time, but the question is there in the kit with the background information that all members received.

The Chair (Mr. David Oraziotti): Thank you. That's time for your presentation. We appreciate you coming in today.

CANADIAN UNION OF PUBLIC EMPLOYEES, ONTARIO

The Chair (Mr. David Oraziotti): Our next presentation is the Canadian Union of Public Employees, Mr. Hahn. Mr. Hahn, state your name for the purposes of Hansard, and you can start your presentation. You have 15 minutes. Any time you don't use will be divided among members for questions.

Mr. Fred Hahn: Thanks. My name is Fred Hahn, and I'm the president of CUPE Ontario.

As you know, CUPE has more than 240,000 members across Ontario, including 500 workers at the TTC, members of CUPE Local 2, who work on signals and communications across the system. I want to start by underscoring the importance of their work to the transit commission and to make it clear that we support the presentation that we know they've made previously to this committee.

I should also point out that we represent employees in half a dozen municipal public transit systems across Ontario and more than 60,000 members in municipalities, all of whom are watching this process very carefully.

I want to thank you for the opportunity to present our views. There are three key messages that we'd like to bring to the committee about Bill 150.

Number 1: When it comes to designating essential services in Ontario for the purpose of this kind of legislation, there is a well-defined and historically recognized legal threshold that must be met. That bar is set high, as it should be. When we're in a discussion about removing people's legal rights, that bar should be set high. Before we can justify taking away those rights, we must meet the test of demonstrating clear and defined threats to public safety. For eight years, this government has not seen that threat, because it doesn't exist. It has not been met, we believe, in this legislation. If the government truly believed that this was an essential service, then they would not stand by in the face of cuts to bus routes or hours of service.

Number 2: While the TTC, in our view, does not meet the legal test of being an essential service, we know that in the day-to-day understanding of that word, it is very much essential. It's so vitally important, in fact, that the question we want to ask the government is this: How can it refuse to do what Ontario always did before Mike Harris was the Premier of this province and actually ensure provincial operating funding to the TTC? What the people of Toronto care about most is ensuring the operation of their public transit authority. But Bill 150 is not about protecting the public's vital service; it is about distracting the public's focused attention, moving it away from the issues of overcrowding, cuts to routes and hours of service, and the absence of provincial operating funding.

Finally, Bill 150 is an unwarranted attack on generations-old, hard-earned rights, civil rights which are at the foundation of our proven collective bargaining system, a system that our own provincial Labour Relations

Act supports and encourages as a fair and civilized approach to resolving labour-management disputes. Bill 150, intentionally or not, legitimizes and even encourages a growing Tea Party-style attack on public sector workers, their unions and collective bargaining overall, an attack that's unworthy of this government—unworthy, we would say, of any political party in our province.

The advocates of Bill 150 in the government are asking Ontarians to believe that without the legislation, Torontonians would not have assurance that their transit service could be relied upon when they need it. If this were true, there might even be some grounds for debate, but we know it's not true. The Premier of the province knows it's not true. The mayor of Toronto knows it's not true. Even CFRB host John Tory knows it's not true. That's because on February 10 all three unions at the TTC, including CUPE, made a voluntary and unconditional no-strike commitment. That commitment was made in full public view at a well-attended press conference. It was put in writing the same day to Ontario's labour minister, Charles Sousa.

So if the legislation is not needed to prevent strikes, then why is it here? If Bill 150 is such good public policy, then why hasn't it been anywhere on the government's agenda for the entire eight years that it was in office? And why, when this same policy came forward as a private member's bill, did more Liberals, including ministers and former ministers, actually vote against it than for it?

Today, members of this committee might ask, even if it's true that unions have made this legislation unnecessary by voluntarily agreeing to forgo work stoppages at the TTC, why does it matter if the bill goes ahead anyway? It matters because for the province of Ontario the right to strike lies at the heart of a successful collective bargaining system, and the only time it makes sense to remove those rights is when public safety is threatened. Collective bargaining only works when both sides are prepared to compromise to reach an agreement, and nothing encourages the willingness to compromise more than the prospect of a strike. That's true for the union side and for the employer side. But when the possibility of a strike is removed, the incentive to compromise is reduced, and both sides can let an arbitrator make tough decisions for them.

1440

We should look at what's been happening at the TTC bargaining table since Bill 150 was introduced. Only a few weeks ago, CUPE Local 2—our local at the TTC—their bargaining team met with the employer, exchanged contract proposals and then, knowing that the legislation was being rammed through the House, TTC management, without engaging in even one minute of real, actual, face-to-face negotiations, telephoned the union to say that it had filed for conciliation. This is how, in one legislative swoop, without the bill even being passed, the legislation has already damaged any hope of meaningful contract bargaining at the TTC.

As I said at the outset, I want to repeat our three key messages. First, the government has failed to meet the

threshold for the legal test of essential services legislation. Second, the bill is unnecessary to ensuring continuity of service and distracts attention away from quality service issues that the public is most concerned about: stable ongoing operating funding that will protect public services against cuts to routes and hours of service. Third, this bill is an unwarranted attack on the rights of thousands of Torontonians and sets a precedent for challenging the rights of public employees elsewhere in the province.

It is an irresponsible invitation to a Tea Party-style public rhetoric against those who work in the public sector, rhetoric which, as we've seen in many places like Wisconsin, is really about aggravating social conflict and division, and which is unbecoming and unworthy of this government and any political party in this province.

We say to the committee, if your concern as legislators is to have a strong and reliable transit system in the city of Toronto, you shouldn't pass this legislation. Rather, you should turn your attention to the real issues of overcrowding, cuts to routes and hours of service by funding operating funding at the TTC. You should turn your attention to the fact that Ontario continues to embarrass itself as long as it continues to be the only jurisdiction in North America to refuse operating funding to its largest municipal public transit system.

Finally, while it should be very clear that our union is opposed to this legislation, as it is unnecessary and, indeed, destructive, it also appears that the government intends to proceed, regrettable as that is, so we must point out that there are features in this bill that set it apart from and make it worse than other already existing essential services legislation in the province, features that make a bad bill even worse. Specifically, we refer to the bill's inclusion of final-offer selection as a method of arbitration that may be used to resolve the bargaining disputes of the TTC.

Final-offer selection is a method of arbitration in which, ultimately, the arbitrator is required to choose the proposals of either the employer or of the union in their entirety, rather than selecting the best proposals from either side. This winner-take-all approach is hugely damaging to good labour relations.

Even if one accepts the premise of Bill 150, which we do not, final-offer selection is totally unnecessary for its purpose. As the largest trade union in Ontario, with more than 240,000 members in every community and every riding in the province, CUPE must insist that if Bill 150 proceeds, final-offer selection must be removed from it entirely.

In closing, I'd like to ask you to reflect on the arguments we've raised here today, that you weigh this bill against the large body of historical evidence of generations of successful free collective bargaining in Ontario, that you remember that the obligation of the government is to govern for all of the people in the province, and that it is wrong to punish men and women in one community to satisfy the political needs of one mayor versus the needs of all of the people of the province. We ask you to

consider this because we don't think it's too late to stop a bad bill from becoming law.

Thanks for your attention, and I'll be happy to answer any questions.

The Chair (Mr. David Oraziotti): Thanks for your presentation. We'll start over here with the government caucus. Go ahead, Mr. Levac. Do you have a question or—Mr. Zimmer, go ahead.

Mr. David Zimmer: Mr. Hahn, on February 22, 2011, CUPE wrote—you signed the letter—to all the members of the Ontario Legislature and you raised various arguments against the legislation. At the second paragraph of the letter, you refer to the issues that the TTC in Toronto and the public were facing as “a non-existent issue.”

The question that I have is, do you think these TTC strike issues are a non-existent issue to the students who use the TTC, the workers who need the TTC, the seniors and the parents who have to send their kids out and about on a daily basis on the TTC and who have no other alternative if the TTC is not running? Is it a non-existent issue for them?

Mr. Fred Hahn: Well, we know this because our members are members of the public. What people are most concerned about is having a reliable service that they can use as a public transit authority. That's why we're saying very clearly that Bill 150 does nothing to resolve issues of reliability. In the current round of negotiations that are coming, the unions have already made an offer that will ensure that there's no work stoppage.

But beyond that, the bigger issues, we believe—and in fact, we know the people of the city of Toronto believe—are about funding that service in a way that makes it reliable. How can we talk about an essential service when those same students and nurses who get off at midnight and people who rely on that transit authority will not be able to rely on a bus route that just got cut in their neighbourhood because there isn't sufficient funding to allow for it to happen? An essential service means that it has to be provided for everyone, whenever they need it. That's why we think the real issue here is about core operating funding from the province for the largest municipal transit authority in the province.

The Chair (Mr. David Oraziotti): Thank you. We need to move on.

Mr. Hillier, questions?

Mr. Randy Hillier: Thank you, Mr. Hahn, for coming here today.

I want to just ask you—first off, I have to say I did find it interesting that you referred to the present government as a radical Tea, Party-type movement. But I do want to ask you this: Looking at your presentation, we see a number of members of the government side who voted one way last year and they're voting a different way this year; even some members on this committee. The members from York South–Weston, Pickering, Stormont–Dundas, Etobicoke, Brant and Don Valley West all voted against making the TTC an essential service last year. Of course, they're now championing that it ought to be an essential service.

I just want to get your take and CUPE's take on elected people who vote one way one day and vote a different way the next day, and if you have any faith or trust in the present government.

Mr. Fred Hahn: Well, it mystifies us as to why people would vote for something that we think is a bad idea. Again, it doesn't solve the issues of the TTC. In fact, it targets workers. It says that if there are problems at that service, it is the workers who are the problem. Without those workers, there would be no service. Those workers have come forward, all three unions of the TTC, to ensure continuity of service in the round of bargaining that has begun. So from our perspective, this is completely unnecessary and unwarranted.

Why members of the government would change their view is something that I guess we'll have to ask them. It's why we asked the question in our presentation.

At the end of the day, this bill is unnecessary, unwarranted and makes no sense in our view.

Mr. Randy Hillier: Have you heard anything yet that justifies, in your mind, why Liberals one day would vote against an essential service bill proposed by a private member and then champion it the next day when it's a government bill?

Mr. Fred Hahn: We're well aware that there has been a request from the mayor of Toronto. It's why we wanted to make clear in our presentation—it's why I ended by saying that, from our perspective, the government of Ontario is responsible for setting out a labour relations environment for the entire province. One municipality, and a request from one municipality, cannot and should not set up a situation where one group of workers that delivers one service in one municipality is treated differently from other workers in the province. It is short-sighted, in our view.

Mr. Randy Hillier: Thank you.

The Chair (Mr. David Oraziotti): Mr. Kormos, go ahead.

Mr. Peter Kormos: Thank you, Chair—you're not angry anymore, are you? You've calmed down? Okay.

Interruption.

Mr. Peter Kormos: Brother Hahn, thanks for coming. I, too, noted the 10 flippers that you identified in your submission, but it underscores for me something that I've known for a long time. That is, the nicest thing about being a Liberal is that you don't always have to be a Liberal, and we're learning that through the course of discussing Bill 150.

Is this bill going to improve labour relations at the TTC?

Mr. Fred Hahn: It will harm labour relations at the TTC.

1450

Mr. Peter Kormos: Is it going to improve TTC service?

Mr. Fred Hahn: We believe it will do nothing to improve TTC service.

Mr. Peter Kormos: Will the bill, in fact, stop work stoppages?

Mr. Fred Hahn: We believe that it will not, in fact, stop work stoppages, because even while the bill speaks to things being illegal, that doesn't necessarily mean that it will stop work stoppages.

What will guarantee a good public service and what will guarantee good labour relations is an environment in which those workers and the TTC can come to agreements together in an environment that we use, that 97% of the time across the province of Ontario in the public sector and the private sector works well, which is free collective bargaining.

Mr. Peter Kormos: See, because I think—

The Chair (Mr. David Oraziotti): That's our time.

Mr. Peter Kormos: —the public is getting sold a bill of goods on this one.

The Chair (Mr. David Oraziotti): I let you go a little longer. That's time. Thanks.

We appreciate you coming in today, Mr. Hahn, for your presentation.

MR. DAVID RAPAPORT

The Chair (Mr. David Oraziotti): The next presentation: David Rapaport.

Mr. David Rapaport: Thank you. This dragged me out of retirement.

The Chair (Mr. David Oraziotti): Good afternoon. Welcome to the Standing Committee on General Government. You've got 15 minutes for your presentation. You can start by stating your name, and any time you don't use will be divided among committee members.

Mr. David Rapaport: Thank you. My name is David Rapaport. I handed out a couple of copies—I didn't make 20 copies.

I'll begin with a brief description of myself. I am now retired from the Ontario public service after working for 25 years in information technology, mostly for the Ministry of Education. I was an active member of the Ontario Public Service Employees Union, OPSEU, for that time, between 1984 and 2009. I was on the OPSEU executive for 10 of those years, and in that capacity I was involved with discussions/negotiations with the Rae government between 1991 and 1993 on reform to the Crown Employees Collective Bargaining Act, CECBA, which included discussions on the right to strike for public servants and on essential services. I'll return to that later.

In 1991, McGill-Queen's University Press published my book on the 1996 OPS strike, and after retirement in 2009 I began studies as a Ph.D candidate in the Canadian studies program at Trent University in Peterborough, focusing on labour history. This is my presentation, and I represent myself and myself only.

On its face, the move to recognize the Toronto Transit Commission as an essential service is a peculiar move. The TTC is not an essential service. In Ontario, the criteria for essential services are described and laid out in the legislation governing the labour relations between the Ontario government and unionized employees in the Ontario public service, and between crown corporations

such as the LCBO and GO Transit and their unionized employees. This is the Crown Employees Collective Bargaining Act. In many ways that's the flagship legislation here when it comes to essential services, because it's dealing with your own employees.

Section 34 of CECBA clearly describes when a public service is an essential service for the purposes of collective bargaining. It must conform to one or more of the following four criteria: (1) danger to life, health or safety, (2) the destruction or serious deterioration of machinery, equipment or premises, (3) serious environmental damage, or (4) disruption of the administration of the courts or of legislative drafting.

This limitation on free collective bargaining is found in other labour legislation such as the legislation governing labour relations in the hospital sector. I'm referring to the Hospital Labour Disputes Arbitration Act, HLDAA. Section 11, based on the first principle found in CECBA—danger to life, health and safety—clearly states that in the hospital sector strikes and lockouts are prohibited.

The service provided by the Toronto Transit Commission is highly valuable. I personally use it almost every day. Its disruption would be and has been highly inconvenient. However, according to current criteria for essential services in Ontario, it is not essential; it's not even close. Declaring public transit in Toronto an essential service would be an arbitrary act based on political motivation.

Furthermore, there hasn't been an onslaught of TTC strike or lockout activity in the recent past or even the long-term past. There have been 13 lost days in the past 31 years, an average of 0.42 lost days a year. This is hardly an emergency. Considering it a problem is equivalent to Stockwell Day's ringing the alarm bells about unreported crime. If you cannot see the problem, then simply imagine the problem, or, in the words of a former Ontario Minister of Education, manufacture the crisis.

Therefore, from a collective bargaining perspective, there is something dishonest and arbitrary about Bill 150. Given the current state of essential service determination in Ontario, there is nothing essential about public transit in Toronto. Why, then, would you limit the right of free collective bargaining for transit workers in Toronto?

Bill 150 represents the diminishment of democratic rights. Even though the city of Toronto voted on this matter and requested this from you, you have the final word. You can say no. Acknowledgement of the rights of Toronto city council to forward its views is not democratic if it means the contraction or elimination of the democratic rights of workers and their unions. It is particularly problematic when the TTC is clearly not an essential service.

Passage of Bill 150 would be political pandering to an overtly right-wing administration at Toronto city hall. Under the practice of Canadian governance, provincial Parliaments have jurisdiction over legislation pertaining

to labour relations, not municipalities. This is your decision. You have full ownership.

This bill has implications for labour relations in the entire province by interfering with free collective bargaining. It would be more honest to have a debate over what constitutes an essential service rather than arbitrarily make an exception to the current standards. This bill is dishonest and it is arbitrary.

The Mike Harris government diminished collective bargaining rights for all workers many times, starting with Bill 7 in October 1995, yet it maintained the right to strike for crown employees. The passage of Bill 150 would represent a legislative feat that out-Conservatives the Common Sense Revolution. Does the Liberal government want this legacy? I would think not.

There are many problems at the TTC, such as finance, infrastructure and service. Enacting an anti-union law might satisfy the appetite of some right-wing politicians in the city of Toronto and elsewhere but it does nothing to address these many problems at the TTC.

Approach these issues directly and openly. Do not pass this bill. Thank you for your time.

The Chair (Mr. David Oraziotti): Thank you for your presentation. Mr. Hillier, you're up first.

Mr. Randy Hillier: Thank you very much. It was a very thoughtful presentation. You made some good arguments and some good points. The bill is open to challenges on whether or not the TTC is, in fact, an essential service and meets the criteria. I just want to thank you for bringing forward those thoughts in the presentation.

The Chair (Mr. David Oraziotti): No other questions? Mr. Kormos, go ahead.

1500

Mr. Peter Kormos: Thank you kindly, Brother Rapaport.

Mr. David Rapaport: Brother Kormos.

Mr. Peter Kormos: Old trade unionists don't retire.

Mr. David Rapaport: I know. We just write Ph.D. dissertations.

Mr. Peter Kormos: Have you paid any attention to the preamble of the bill?

Mr. David Rapaport: I'm afraid not, no.

Mr. Peter Kormos: Okay. It's interesting, because the preamble tries to create a silk purse out of a sow's ear, so to speak. By declaring that the disruption of transit services gives "rise to serious public health and safety ... concerns," the preamble tries to create as a reality the fact that this is a bill addressing public health and safety. But they don't even get it right there, because they say "concerns" as compared to real danger.

The head of the OFL made reference to the Supreme Court of Canada decision, the one that flowed out of the BC health workers' issue. What did the Supreme Court of Canada say, if you can tell us—some people should know this, for the purpose of understanding this bill—about collective bargaining, and what is the role of the right to withdraw one's labour in the context of collective bargaining? In other words, is there collective bargaining when you can no longer withdraw your labour?

Mr. David Rapaport: You're referring to the 2007 decision with the BC health unions. They declared that collective bargaining was in fact covered by the Charter of Rights as a right of association, and that the British Columbia government acted inappropriately and illegally in terms of diminishing collective bargaining rights.

But let's talk a little bit about this other aspect of the right to strike. I don't think there's any authority on collective bargaining or labour relations that would dispute the notion that the best agreements that occur in collective bargaining are those that are actually negotiated, simply because both parties take ownership of that decision. In fact, the word "mature" is used quite regularly when it comes to that. When an arbitrator imposes—and the word is "imposes"—a decision on a collective bargaining dispute, neither side has to take ownership of it. It not only does nothing to improve labour relations; it impairs labour relations with the current collective agreement.

As far as health and safety goes, I don't think that anybody would say, "God, a TTC strike is really messy and inconvenient. I don't particularly like them. I have to walk around." But it's still not essential. Democracy is sometimes unpleasant and it's messy, but the best way to do collective bargaining is with the right to strike and the right to lock out. Let the side that feels stronger and more powerful and more sure of itself go ahead and win.

Another point I want to make is that governments have to face the fact that you're employers; you're not just governments. You have the responsibility of being an employer, and when you impose your legislative prerogative to change the collective bargaining regime for your own employees or any public sector employees, I have to say that it's a bit arbitrary and it's a bit opportunistic. It's really relinquishing your responsibilities as an employer.

Don't pass this bill. It's wrong. It's pandering. It's bad for collective bargaining and it's bad for labour relations. It's wrong. Don't pass it, please.

The Chair (Mr. David Oraziotti): Okay. I'm going to stop you there. Thanks. We're going to move on. Mr. Zimmer, go ahead with your question.

Mr. Qaadri?

Mr. Shafiq Qaadri: Mr. Rapaport, of course on the government side I'd like to thank you not only for your presence today but for your many years of service to the OPS. I think we'll all be accessing your book, published, I understand, in 1999: *No Justice, No Peace: The 1996 OPSEU Strike Against the Harris Government in Ontario*.

We don't have any elaborate questions, but I'd just like to ask you—I'm sure you're aware of what took place on Sunday, April 28, 2008, in this Legislature, when there was all-party support to legislate the TTC workers back to work after that particularly fateful weekend.

Mr. David Rapaport: Yes.

Mr. Shafiq Qaadri: I'm sure you're aware that all three parties were onside for that.

Mr. David Rapaport: Yes.

Mr. Shafiq Qaadri: With that particular move—legislation passed—is it fair to say that all three parties essentially deemed the TTC an essential?

Mr. David Rapaport: I'm not sure I want to get into a partisan kind of discussion here in terms of this issue—

Mr. Shafiq Qaadri: Your remarks, sir, have been quite partisan, so I invite you to continue.

Mr. David Rapaport: I'm making my remarks against those people who are bringing this bill forward. If it happens to be the Liberals, it happens to be the Liberals. If it were the Tories or the NDP—and, believe me, I've spoken against all three parties. I'm sure Mr. Kormos—

Mr. Peter Kormos: So have I.

Mr. David Rapaport: I know you have.

I'm addressing the issue. If it comes out partisan—well, you folks happen to be the government right now and that's just the way it is.

I understand what happened in 2008. There are many ways of contracting or diminishing collective bargaining rights for workers, and one of them is declaring something an essential service, which the federal government

has done for years and years in their dealings with the Public Service Alliance. That's one way of doing it.

Another way of doing it is by legislating people back to work, and I would oppose that as well. Collective bargaining should be respected. It's the best way. The right to strike and maintaining this and negotiating an agreement between the two sides is the most mature, the most democratic and the most proper way to come about with an agreement.

Mr. Shafiq Qaadri: All right. On behalf of the government side, we thank you for your very measured and thoroughly knowledgeable remarks and wish you success in your doctoral pursuits.

Mr. David Rapaport: Thank you.

The Chair (Mr. David Oraziotti): Dr. Qaadri, your sense of timing is much better—15 minutes on the dot.

Thank you very much for your presentation. The clerk is happy to clarify any of the time today that was used by any of the presenters. Everyone had an equal amount of time of 15 minutes. So thank you for coming in today.

The committee is adjourned.

The committee adjourned at 1506.

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Mrs. Amrit Mangat (Mississauga–Brampton South / Mississauga–Brampton-Sud L)

Mr. Rosario Marchese (Trinity–Spadina ND)

Mr. Bill Mauro (Thunder Bay–Atikokan L)

Mr. David Oraziatti (Sault Ste. Marie L)

Mrs. Joyce Savoline (Burlington PC)

Substitutions / Membres remplaçants

Mr. Randy Hillier (Lanark–Frontenac–Lennox and Addington PC)

Mr. Peter Kormos (Welland ND)

Mr. Shafiq Qadri (Etobicoke North / Etobicoke-Nord L)

Mr. David Zimmer (Willowdale L)

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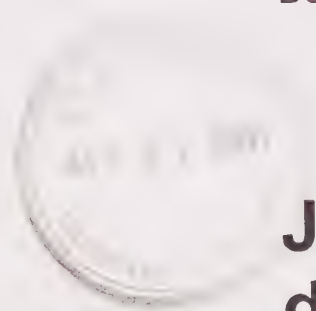
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**Legislative Assembly
of Ontario**

Second Session, 39th Parliament

**Assemblée législative
de l'Ontario**

Deuxième session, 39^e législature



**Official Report
of Debates
(Hansard)**

Wednesday 23 March 2011

**Journal
des débats
(Hansard)**

Mercredi 23 mars 2011

**Standing Committee on
General Government**

Toronto Transit Commission
Labour Disputes Resolution Act,
2011

**Comité permanent des
affaires gouvernementales**

Loi de 2011 sur le règlement
des conflits de travail
à la Commission de transport
de Toronto

Chair: David Orazietti
Clerk: William Short

Président : David Orazietti
Greffier : William Short

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENT

Wednesday 23 March 2011

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Mercredi 23 mars 2011

*The committee met at 1613 in room 228.*TORONTO TRANSIT COMMISSION
LABOUR DISPUTES RESOLUTION ACT,
2011LOI DE 2011 SUR LE RÈGLEMENT
DES CONFLITS DE TRAVAIL
À LA COMMISSION DE TRANSPORT
DE TORONTO

Consideration of Bill 150, An Act to provide for the resolution of labour disputes involving the Toronto Transit Commission / Projet de loi 150, Loi prévoyant le règlement des conflits de travail à la Commission de transport de Toronto.

The Chair (Mr. David Orazietti): Good afternoon, everyone. Welcome to the Standing Committee on General Government. As you're aware, we're here to consider, clause by clause, Bill 150. Does anyone have any introductory comments they'd like to make before we get going? Seeing none, we'll take a look at the first section and, if we're agreeable—in sections 1 to 5 there are no proposed amendments—I would ask that the votes be considered in a block or a group of what's before us in the bill so that we can move directly to the amendments that are before us.

Shall sections 1 through 5 carry?

Mr. Peter Kormos: One moment. There is debate, notwithstanding we're proceeding with them as a group. I will be reserving my comments for the end of this afternoon. I have no comments specifically on that but I will be asking for a recorded vote, please.

The Chair (Mr. David Orazietti): Okay. A recorded vote has been called for. On each of those individually, or—

Mr. Peter Kormos: As a group is fine. I'll indicate if we have to look at something, in my view, in a section.

The Chair (Mr. David Orazietti): Okay.

Shall sections 1 through 5 carry?

Ayes

Clark, Dhillon, Hillier, Johnson, Mangat, McNeely, Qaadri.

Nays

Kormos.

The Chair (Mr. David Orazietti): Those sections are carried.

Section 6, the first NDP motion. Mr. Kormos, go ahead.

Mr. Peter Kormos: I move that subsections 6(5) and (6) of the bill be struck out and the following substituted:

“Final offer selection

“(5) Final offer selection shall not be selected as the method of arbitration under this section.”

The committee heard from participants who attended the committee and who made submissions that this was repugnant to the labour parties, and we in the NDP find it a particularly oppressive style of resolution—that is to say, the final offer selection. That's why we're asking that it be struck out on this and on subsequent parts of the bill.

The Chair (Mr. David Orazietti): Thank you, Mr. Kormos. Further comment? Mr. Qaadri.

Mr. Shafiq Qaadri: Thank you, Mr. Kormos, for NDP motion 1. It's the government position that we will not be supporting this particular amendment, and I will offer the following rationale: The provisions of the act, as proposed, are consistent with other labour relations legislation that provides for compulsory interest arbitration such as the Hospital Labour Disputes Arbitration Act.

It would allow the parties to select the method of arbitration. The minister could select the method of arbitration only if the minister appoints the arbitrator, meaning if the parties themselves cannot agree on an arbitrator.

Final offer selection could be imposed as the method of arbitration in this circumstance only if mediation is part of the process and, even then, only if the minister in his sole discretion selects that method because he is of the view that it is the most appropriate method, having regard to the nature of the dispute.

The Chair (Mr. David Orazietti): Any further comment?

Mr. Peter Kormos: Recorded vote.

Ayes

Kormos.

Nays

Clark, Dhillon, Hillier, Johnson, Mangat, McNeely, Qaadri.

The Chair (Mr. David Orazietti): The motion is defeated.

Shall section 6 carry?

Mr. Peter Kormos: Recorded vote.

Ayes

Clark, Dhillon, Hillier, Johnson, Mangat, McNeely, Qaadri.

Nays

Kormos.

The Chair (Mr. David Orazietti): Section 6 is carried.

Section 7, NDP motion 2: Go ahead, Mr. Kormos.

Mr. Peter Kormos: I move that subsection 7(4) of the bill be amended by striking out “or mediation-final offer selection” in the portion before clause (a).

This amendment is consistent with the one I made previously, and for the same reasons.

The Chair (Mr. David Orazietti): Any further comment? Mr. Qaadri.

Mr. Shafiq Qaadri: Thank you again, Mr. Kormos, for NDP motion 2. Our rationale for opposing this particular motion is also remarkably consistent with our earlier rationale, and that is that the provisions of the act as proposed are consistent with other labour relations legislation that provides for compulsory interest arbitration. It would allow the parties to select the method of arbitration. The minister could select the method of arbitration only if the minister appoints the arbitrator, which means that the parties themselves cannot agree on an arbitrator.

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Final offer selection could be imposed as the method of arbitration in this circumstance only if mediation is part of the process, and even then, only if the minister in his sole discretion selects that method because he is of the view that it is the most appropriate method, having regard to the nature of the dispute.

The Chair (Mr. David Orazietti): Further comment? Seeing none, all those in favour of the second NDP motion?

Mr. Peter Kormos: Recorded vote.

Ayes

Kormos.

Nays

Clark, Dhillon, Hillier, Johnson, Mangat, McNeely, Qaadri.

The Chair (Mr. David Orazietti): The motion is defeated.

Section 7: Shall section 7 carry?

Mr. Peter Kormos: Recorded vote.

Ayes

Clark, Dhillon, Hillier, Johnson, Mangat, McNeely, Qaadri.

Nays

Kormos.

The Chair (Mr. David Orazietti): Carried.

Sections 8 and 9: There are no amendments. Shall sections 8 and 9 carry?

Mr. Peter Kormos: Recorded vote.

Ayes

Clark, Dhillon, Hillier, Johnson, Mangat, McNeely, Qaadri.

Nays

Kormos.

The Chair (Mr. David Orazietti): Sections 8 and 9 are carried.

Section 10, NDP motion 3: Go ahead, Mr. Kormos.

Mr. Peter Kormos: I move that paragraph 1 of subsection 10(2) of the bill be struck out.

Paragraph 1, of course, refers to the employer's ability to pay in light of its fiscal situation. That can offset any of the other number of considerations, and the issue around appropriate pay should be what's fair and what's reasonable in terms of the work that's being provided.

The Chair (Mr. David Orazietti): Further comment?

Mr. Shafiq Qaadri: We thank the NDP for presenting motion 3. It's our government position that we will not be supporting this particular amendment, and the reasons are as follows: The arbitration process is an independent one. Arbitrators are required to consider specific criteria when rendering a decision, including, of course, ability to pay. The provisions of this particular act, as proposed, are consistent with other labour relations legislation that provides for compulsory interest arbitration, such as, as an example, the Hospital Labour Disputes Arbitration Act.

The Chair (Mr. David Orazietti): Any further comment? NDP motion 3—

Mr. Peter Kormos: Recorded vote.

Ayes

Kormos.

Nays

Clark, Dhillon, Hillier, Johnson, Mangat, McNeely, Qaadri.

The Chair (Mr. David Oraziotti): The motion is defeated.

Conservative motion 4: Go ahead, Mr. Hillier.

Mr. Randy Hillier: I move that section 10 of the bill be amended by adding the following subsection:

“Consumer price index, limit on salary increase

“(2.1) The arbitrator shall not award an increase in employees’ salaries in respect of any period if the increase would exceed the increase in the consumer price index for Canada for prices of all items in that period if either the province of Ontario or the city of Toronto incurs a budgetary deficit during that period.”

The Chair (Mr. David Oraziotti): Debate or comment?

Mr. Randy Hillier: Yes. We have seen the rise in cost in essential service legislation. The same criteria that are outlined in this one are used in others. And we’ve seen that arbitrators have not significantly adhered to or have taken broad latitude with the criteria in other labour negotiations. This amendment imposes a definition of “ability to pay,” and it’s suggesting that if the province or the municipality is indeed in a difficult financial circumstance, the award shall not be greater than the consumer price index.

The Chair (Mr. David Oraziotti): Any further comments? Mr. Kormos, go ahead.

Mr. Peter Kormos: New Democrats oppose this amendment.

The Chair (Mr. David Oraziotti): Okay. Mr. Qaadri.

Mr. Shafiq Qaadri: Thank you, Mr. Hillier, for your presentation of amendment 4 on behalf of the PCs. We join in fact with the NDP for not supporting this particular amendment, the rationale as follows: The arbitration process is an independent one and the bill already requires arbitrators to consider specific criteria when rendering a decision, including the ability to pay and, of course, the economic situation in the province of Ontario and the city of Toronto. The provisions of the act as proposed are consistent with other labour relations legislation that provides for compulsory interest arbitration, such as, once again, the Hospital Labour Disputes Arbitration Act.

The Chair (Mr. David Oraziotti): Any further comment on the motion?

Mr. Steve Clark: Recorded vote.

Ayes

Clark, Hillier.

Nays

Dhillon, Johnson, Kormos, Mangat, McNeely, Qaadri.

The Chair (Mr. David Oraziotti): The motion is lost. Conservative motion number 5: Go ahead, Mr. Hillier.

Mr. Randy Hillier: I move that section 10 be amended by adding the following subsection:

“Duty of employer re certain salary increases

“(2.2) If the arbitrator awards an increase in employees’ salaries in respect of any period that exceeds the increase in the consumer price index for Canada for prices of all items in that period, the employer shall ensure that the amount of the increase in salaries that exceeds the increase in that index is financed by corresponding increases in rider fares.”

The Chair (Mr. David Oraziotti): Thank you, Mr. Hillier. Any further comment on this?

Mr. Randy Hillier: Yes. I think that should be intuitive, the rationale and the motivation behind this amendment. We are looking at, should there be an award that’s greater than the consumer price index, that it is not just the property taxes, not just the ratepayers of Toronto who will have to carry the burden of that increase, but that increase is shared by the riders and the users of the TTC.

Now, granted, I’m sure I’m going to hear the same response from the government side as for the last five amendments—it has not deviated at all—but clearly this amendment shares whatever those awards may be that are determined by the arbitrator with all ratepayers in the municipality and with the users of the TTC.

The Chair (Mr. David Oraziotti): Any further comment? Mr. Kormos.

Mr. Peter Kormos: Yes. New Democrats don’t support this proposal. Number one, with all due respect to the mover, as it stands, it would be an unenforceable or moot proposition, because there would be no consequence. There’s no enforcement process contained in the legislation. That’s number one.

Number two is the proposition that public transit should not be funded, nor can it be if it’s going to be effective public transit, solely by the sale of tickets or by the charges assessed against users of public transit. There’s a broader public responsibility to maintain public transit, and this motion overcomes that broader public interest in supporting public transit, not just by municipal taxpayers but by provincial and federal taxpayers.

The Chair (Mr. David Oraziotti): Any further comment?

Mr. Shafiq Qaadri: At the outset, I thank you, Mr. Hillier, for bringing forward PC motion amendment 5 and also Mr. Kormos for not supporting it, as is the government position. Again, the rationale is that the fare increases are a matter for the TTC to decide, of course, internally, and I think that’s a process that we on the government side need to respect, and the provisions of the act as proposed are consistent with other labour relations legislation that I have already cited. The arbitration process is an independent one, and the bill already

requires arbitrators to consider specific criteria when rendering decisions, including, of course, as we've cited again, the ability to pay and the economic situation in the province of Ontario and the city of Toronto.

The Chair (Mr. David Oraziatti): Thanks. Further comment?

Mr. Randy Hillier: Yes. I'm sure every member on this committee has heard from their own municipal leaders, elected officials, of the burden of essential services legislation, with fire, with police, and how that increasing cost is a significant hardship and burden on those municipalities and on those taxpayers.

1630

I'll add to Mr. Kormos's comments. The subsequent amendment that I've proposed does provide a consequence.

I would also really encourage the government members—you know that your municipal people are having difficulties; we need to provide some vehicle to lessen the burden on the ratepayers in municipalities. I would encourage you to look at the amendments as a bulk, in their totality, and have a greater respect for those ratepayers in the municipality of Toronto.

The Chair (Mr. David Oraziatti): Any further comment?

Mr. Shafiq Qaadri: Thank you, Mr. Hillier, for raising those particular concerns, but I think the fare increases, as I've stated, are really a matter internal to the TTC.

The Chair (Mr. David Oraziatti): Any further comment on Conservative motion 5?

Mr. Steve Clark: Recorded vote.

Ayes

Clark, Hillier.

Nays

Dhillon, Johnson, Kormos, Mangat, McNeely, Qaadri.

The Chair (Mr. David Oraziatti): The motion is defeated.

The next motion is Conservative motion 6. Mr. Hillier, go ahead.

Mr. Randy Hillier: I move that section 10 be amended by adding the following subsection:

"Appeal from award

"(8) The arbitrator's award may be appealed by either party to the Superior Court of Justice on the ground that the award is not consistent with the requirements set out in this section."

The Chair (Mr. David Oraziatti): Mr. Hillier, further comment?

Mr. Randy Hillier: Again, I believe it should be intuitive to everyone on this committee, especially with what we've seen through our experience with essential services contracts, that there ought to be a remedy so that if an arbitrator does not hold consistent with the criteria in

the establishment of a settlement, there is a vehicle to remedy that failure of the arbitrator. This amendment provides that vehicle to remedy the situation and is consistent with due process of law and consistent with the recognition of our principles of justice.

Mr. Peter Kormos: New Democrats oppose this amendment. There already exists in law a remedy for arbitrators who exceed their jurisdiction and fail to comply with the law. It's well known and often used. That's the appropriate process with respect to any arbitration-style legislation.

The Chair (Mr. David Oraziatti): Further comment?

Mr. Shafiq Qaadri: The government will not be supporting this particular motion, although I do thank Mr. Hillier for moving it—PC motion 6. The rationale is as follows: The labour arbitrators have been recognized by authorities, including the Supreme Court of Canada, as having expertise in this particular area. The courts have shown deference to that expertise. The provisions of the act, as proposed, are consistent with other labour relations legislation.

The Chair (Mr. David Oraziatti): Any further comment? Mr. Hillier.

Mr. Randy Hillier: Once again, this defines very specifically, and it's included in section 10 with the criteria, that if the arbitration award is not consistent with the specific criteria outlined, then the parties have a remedy—not if the arbitrator has exceeded necessarily; if the arbitration award is not fully compliant and consistent with the criteria. This amendment is open to both sides of the dispute or settlement. I think this provides a clear check and balance to the arbitrator. That arbitrator's settlement or award will be closely monitored, and a very easy remedy can be applied if it is not. I really encourage the members of the government side to reconsider that remedy, what it's there for, and really place a little greater check and balance on the decision-making authority of the arbitrator.

The Chair (Mr. David Oraziatti): Thank you. Any further comment?

Mr. Steve Clark: Recorded vote.

Ayes

Clark, Hillier.

Nays

Dhillon, Johnson, Kormos, Mangat, McNeely, Qaadri.

The Chair (Mr. David Oraziatti): The motion has been lost.

We were dealing specifically with section 10. Shall section 10 carry? All those in favour?

Mr. Steve Clark: Recorded vote.

Ayes

Dhillon, Johnson, Mangat, McNeely, Qaadri.

Nays

Clark, Hillier, Kormos.

The Chair (Mr. David Oraziotti): Section 10 is carried.

There are no amendments from section 11 through and including section 21. Shall section 11 through and including section 21 carry?

Mr. Peter Kormos: Recorded vote.

Ayes

Clark, Dhillon, Hillier, Johnson, Mangat, McNeely, Qaadri.

Nays

Kormos.

The Chair (Mr. David Oraziotti): Carried.

Section 22, NDP motion number 7: Go ahead, Mr. Kormos.

Mr. Peter Kormos: I move that section 22 of the bill be struck out and the following substituted:

“Repeal of act

“22. This act is repealed on the earlier of,

“(a) the day following the fifth anniversary of the coming into force of this act; and

“(b) if a final finding is made under the constitution of the International Labour Organization that this act contravenes a convention of the International Labour Organization that has been ratified by Canada, the day that the final finding is made.”

Obviously, the amendment creates a bone fide and binding sunset clause.

The Chair (Mr. David Oraziotti): Further comment?

Mr. Shafiq Qaadri: Thanks for motion 7, which the government does not support for the following reasons: Included in the bill already is a five-year review provision. This was specifically requested by city council to assess if the act is working as anticipated. The proposed act requires that a review take place within five years of the act coming into force and a report back to the Minister of Labour. To automatically repeal the act would preclude a review from taking place. The proposed legislation demonstrates respect for the collective bargaining process. Nothing in the legislation would prevent the parties from engaging in that collective bargaining process to resolve their particular disagreements. Where an impasse is reached, the legislation will provide a fair system of interest arbitration by a neutral arbitrator.

The Chair (Mr. David Oraziotti): Any further comment? Mr. Hillier.

Mr. Randy Hillier: I will say that it does provide for a sunset clause, not a sunset review. A sunset review is indeed an important element of this. However, this amendment is not proposing that review, just a straight revocation of the act.

To subordinate the Ontario Legislative Assembly to an international labour organization on our decision-making is contrary to the expectations, the conventions and the legislative authority, so we will not be supporting this amendment.

The Chair (Mr. David Oraziotti): Any further comment?

Mr. Peter Kormos: Recorded vote.

Ayes

Kormos.

Nays

Clark, Dhillon, Hillier, Johnson, Mangat, McNeely, Qaadri.

The Chair (Mr. Pat Hoy): The motion is lost.

Conservative motion number 8: Mr. Hillier, go ahead.

Mr. Randy Hillier: I move that section 22 of the bill be amended,

“(i) by striking out ‘initiate’ and substituting ‘complete’; and

“(ii) by striking out ‘shall require a report on the results of the review to be provided to the minister’ and substituting ‘shall lay the report before the assembly by delivering it to the Clerk.’”

The Chair (Mr. David Oraziotti): Any further comments?

Mr. Randy Hillier: I think everybody will see that it's a tweaking of the clause that's in the present bill that the review process is completed within a period of time instead of just initiating a timeline to start a review. It is also respecting the role of members of the Legislative Assembly in that it is not just a minister's prerogative to see this report; it is a prerogative of all members of the Legislative Assembly to see what this review has indicated.

This is not a partisan issue; this is a subject and an amendment to improve the knowledge, understanding and the role of all members of the Legislative Assembly.

1640

The Chair (Mr. David Oraziotti): Any further comment? Mr. Qaadri.

Mr. Shafiq Qaadri: I think the government certainly welcomes non-partisan commentary from you, Mr. Hillier. I'd like to thank you for PC motion number 8, but the government will not be supporting it. The rationale is as follows: The act provides the appropriate degree of flexibility to assess how the proposed act is working, and it is practice and not uncommon for major reports to be made to the minister. The proposed act requires that a review be initiated within five years of the act coming into force, and a report back to the Minister of Labour.

I would just add that this requirement responds to the Toronto city council's motion.

The Chair (Mr. David Oraziotti): Thank you. Mr. Kormos, go ahead.

Mr. Peter Kormos: In this interesting moment during the process of this bill through committee, the New Democrats support the proposition made by the official opposition.

We all know this government's track record when it comes to complying with legislative requirements to conduct reviews. It's a pathetic record; that is to say, the government's record is pathetic in that regard.

We also know that the members of the Legislature have little remedy. We can appeal to the Speaker; we can ask the Speaker to find the government in contempt. But those efforts have not been successful. To date, even public shaming has not motivated the government to comply with any number of instances of legislative requirement to conduct reviews. I suppose this government has gone well past the point of ever feeling ashamed.

Even with the amendment as proposed, we acknowledge that there will be an unenforceability element to it, but it does make it clear, when there is a report, that it be tabled so that it becomes a public document. Otherwise, it has the capacity to remain a private document. That is very, very dangerous. It means that it's not subject to public scrutiny and that the breadth of the review can't be examined and commented on. The accuracy of the conclusions can't be spoken to. Indeed, as the government has designed section 22, a report that is, let's say, unfavourable to the interests of either party could be buried, for political reasons, to prevent the appropriate action from being taken with respect to the future of this legislation.

We're going to support the amendment put forward, even though, as I say, this government has demonstrated that even an amendment, as it says, requiring a report to be completed is the sort of thing that this current government routinely ignores.

The Chair (Mr. David Orazietti): Any further comments on the motion? Mr. Hillier.

Mr. Randy Hillier: I thank the member from Welland for his comments. But I do want to say to members on the opposite side: If you vote against this amendment, you are voting against yourselves. You are diminishing your own role within this assembly. You are abrogating any of your responsibilities, not just for yourselves, but for all members of this House. You are allowing strictly and only the minister to have any decision-making capacity of this review. He will be the only person who has the authority to look at this report. Without this amendment, all we know is that the review will be started; there is no mandate in this present bill to complete the report. There is no timeline to complete the report, just to start it.

I really have to ask the members on the government side: Why are you so willing to diminish your own purpose in this Legislative Assembly? Why are you willing to diminish the people who come after you and their responsibilities in this Legislative Assembly? That is really the question, because in five years' time, you people may not be here. You may not be in government; you may be in opposition. Do you not want to be able to

look at the report and find out if this bill has accomplished what you are voting in favour of? If you're not interested in measuring and seeing what the outcome of your legislation is, then why bother bringing forward legislation? Why bother having members of the Legislative Assembly if you are going to handcuff and gag them and put blindfolds on them that they cannot see the reports that ought to be tabled?

Mr. Shafiq Qaadri: The government's position stands firm.

The Chair (Mr. David Orazietti): Okay. We have a recorded vote called for Conservative motion 8.

Ayes

Clark, Hillier, Kormos.

Nays

Dhillon, Johnson, Mangat, McNeely, Qaadri.

The Chair (Mr. David Orazietti): The motion is lost. Shall section 22 carry?

Mr. Peter Kormos: Recorded vote.

Ayes

Dhillon, Johnson, Mangat, McNeely, Qaadri.

Nays

Clark, Hillier, Kormos.

The Chair (Mr. David Orazietti): Section 22 is carried.

Conservative motion 9: Mr. Hillier.

Mr. Randy Hillier: I move that the bill be amended by adding the following section:

"22.1 The definition of 'essential services' in section 30 of the Crown Employees Collective Bargaining Act, 1993 is amended by striking out 'or' at the end of clause (c) and adding the following clauses:

"(e) disruption of the economy of the province of Ontario or of a municipality in the province of Ontario, or

"(f) disruption of the transportation or mobility of people, goods or services."

This is in keeping with—

The Chair (Mr. David Orazietti): Mr. Hillier, I'm sorry to interrupt you, and I appreciate your enthusiasm for your amendment, but I have to stop you there because the ruling on the motion before us is out of order. It's beyond the scope of the bill being considered today. So I have to rule it out of order, and it can't be considered.

Mr. Randy Hillier: I grant you that. I think it is important for members of the committee to understand what we've heard and that legislation—

The Chair (Mr. David Orazietti): Mr. Hillier, I will let you go on in your comments on the bill or other sections of the bill, but with respect to this we need to

just move on. You can comment on any other part you feel you'd like to, but with respect to this we're going to rule this out of order and move on to section 23.

There are only two other sections here that we have not approved or had discussion on: section 23 and section 24. There are no amendments to those sections, so I'll ask members—

Mr. Peter Kormos: Recorded vote, please.

The Chair (Mr. David Oraziotti): A recorded vote has been called for. Shall sections 23 and 24 carry?

Ayes

Clark, Dhillon, Hillier, Johnson, Mangat, McNeely, Qaadri.

Nays

Kormos.

The Chair (Mr. David Oraziotti): We'll deal with the preamble in the bill. Shall the preamble of the bill carry?

Mr. Peter Kormos: One moment.

The Chair (Mr. David Oraziotti): Any comments? Yes, go ahead.

Mr. Peter Kormos: Look, I want to make it clear, just in case people haven't understood, that New Democrats don't support this legislation and don't support denying workers the right to withdraw their labour, because we consider that an integral part of collective bargaining.

Reference was made to the Supreme Court of Canada's decision that flowed out of the British Columbia Court of Appeal with health workers a few years ago, where the Supreme Court of Canada indicated clearly that the right to collectively bargain was a constitutionally protected right. If collective bargaining is a constitutionally protected right and if the right to withdraw one's labour is an integral part of collective bargaining, then the right to withdraw one's labour is a constitutionally protected right.

New Democrats understand the concept of essential services, and as we pointed out during second reading debate, we believe that if you're going to address the issue of essential services, then you use models that exist already, which require that these are in the public sector and which require, like with correctional officers, that before a work stoppage can take place, the employer and the collective bargaining unit negotiate a minimum level of staffing if it, in fact, is an essential service.

1650

I noted, during the course of the debate and during the course of committee hearings, that the preamble attempts to import the assumption of serious public health and safety concerns. I don't think there's any dispute that there are economic concerns about disruption of service on the TTC. That economic concern exists whether it's the TTC or whether it's the GO train, which, quite frankly, appears to be disrupted far more often than the TTC

is, for all sorts of reasons that the province should be held accountable for.

There are disruptions on the TTC on a regular basis, any number of things: mechanical problems during inclement weather, amongst other things. Again, the argument of \$50 million—people have wanted to pick that number, and I don't think there's any strong evidence. That's the evaluation, notwithstanding what I'm sure was excellent research done by Ms. Churley in the preparation of her report for the transit workers and the transit union.

My concern about the preamble is that it attempts to turn black into white. Our position is that it's regrettable that the government is incorporating this preamble. However, we see a bright light here because this will undoubtedly be one of the things that, should this legislation be subjected to court challenges, will get pointed out by skilful and undoubtedly well-paid lawyers who argue that the province has violated constitutional rights because the TTC doesn't constitute an essential service in Crown Employees Collective Bargaining Act definition. There may well be other references made beyond the Crown Employees Collective Bargaining Act position.

I simply wanted to indicate our opposition to the whole bill and the whole proposition of denying the right to withdraw labour and point out that in our view, the preamble has an element of cuteness to it that's pretty transparent. It does two things. The government is trying to create a silk purse out of a sow's ear. On the other hand, by the government's inclusion of the reference to public health and safety, it is making it clear that it knows that if you're going to deny the right to strike, there has to be more than economic impact; there has to be an impact with respect to public health and safety. That will become an interesting test. That will become the focus of the argument. I look forward to that argument. I look forward to the litigation around it.

I already mentioned that the environmental comment was cute and, I suppose, the government is simply trying to maintain its spin around holding itself out as the exclusive protector of everything that's green in the province of Ontario. But to try to import that into the bill, I thought, was again a little bit over the top.

But God bless the drafters, because it was clever. There's never anything wrong with clever. I compliment the people who wrote the preamble for their cleverness.

The Chair (Mr. David Oraziotti): Any further comments on the preamble?

Mr. Randy Hillier: The member for Welland and myself do share a number of views on that preamble. The amendment that is ruled out of order, of course, tries to fix up and amend some of the loopholes, or some of the forgotten elements. Or maybe the government just thought the cleverness would be suited, but they are opening themselves up to challenges with the way the bill is written and not seeking to diminish the probability of those challenges. The reason why I put that amendment in there was to see what sort of triggers would happen with the government themselves and if they would seek

to close up those loopholes and prevent legal challenges to this bill. Clearly, that was not the case.

But I do want to say on the whole bill, and on this committee, that the government members may have a right to diminish their own role in life and their own role here in the assembly, but they have no right to diminish the role and responsibilities of others. I've seen one member from the government side here today speak. Just because you're a member of the Liberal Party, you may choose to withdraw your right to have an opinion or your right to express an opinion, but you have no business trying to take that from other members. That's what you've done striking down that amendment, trying to empower the members of this Legislature to do their job.

You five people are trying to take it away from us. You should be absolutely ashamed of that. Just because you're part of the Liberal Party doesn't mean that you ought not to have a voice whatsoever and that you consider yourselves nothing but parts of a process that have no influence.

I'm very disappointed with the members of the government on this committee.

The Chair (Mr. David Oraziotti): Any further comment on the preamble? Seeing none—

Mr. Peter Kormos: Recorded vote.

The Chair (Mr. David Oraziotti): A recorded vote has been called for. Shall the preamble carry?

Ayes

Dhillon, Johnson, Mangat, McNeely, Qaadri.

Nays

Clark, Hillier, Kormos.

Mr. Peter Kormos: I thought you were tricked for a minute, Chair.

The Chair (Mr. David Oraziotti): No, I wasn't sure whether or not the official opposition had intended to vote for the preamble or not, with the way voting has been going here today.

The preamble is carried. We're on to the next item. Shall the title of the bill carry?

Mr. Peter Kormos: Recorded vote.

Ayes

Clark, Dhillon, Hillier, Johnson, Mangat, McNeely, Qaadri.

Nays

Kormos.

The Chair (Mr. David Oraziotti): That's carried. Shall Bill 150 carry?

Mr. Peter Kormos: Recorded vote.

Ayes

Clark, Dhillon, Hillier, Johnson, Mangat, McNeely, Qaadri.

Nays

Kormos.

The Chair (Mr. David Oraziotti): Shall I report the bill to the House?

Mr. Peter Kormos: Recorded vote.

Ayes

Clark, Dhillon, Hillier, Johnson, Mangat, McNeely, Qaadri.

Nays

Kormos.

The Chair (Mr. David Oraziotti): Thank you, folks. The committee is adjourned.

The committee adjourned at 1659.

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Second Session, 39th Parliament

**Assemblée législative
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Deuxième session, 39^e législature



**Official Report
of Debates
(Hansard)**

Wednesday 30 March 2011

**Journal
des débats
(Hansard)**

Mercredi 30 mars 2011

**Standing Committee on
General Government**

Subcommittee report

**Comité permanent des
affaires gouvernementales**

Rapport du sous-comité

Chair: David Orazietti
Clerk: William Short

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Wednesday 30 March 2011

Mercredi 30 mars 2011

The committee met at 1605 in room 151.

SUBCOMMITTEE REPORT

The Chair (Mr. David Oraziotti): Good afternoon, everyone, and welcome to the Standing Committee on General Government. We've got a subcommittee report here. Can I get somebody to move that? Mr. Bisson.

Interjection.

Mr. Gilles Bisson: I have to move the whole thing first.

Your subcommittee met, and we have 13 recommendations in regard to the subcommittee report. I'll just read them for the record.

Your subcommittee met on Tuesday, March 29, 2011, to consider the method of proceeding on Bill 151, An Act to enact the Ontario Forest Tenure Modernization Act, 2011, and to amend the Crown Forest Sustainability Act, 1994, and recommends the following:

(1) That the committee meet in Toronto on April 11 and 13, 2011, for the purpose of holding public hearings.

(2) That the committee request authorization from the House leaders to meet the week of April 25, 2011, for the purpose of public hearings.

(3) That the committee, with the authorization of the House, meet in Pembroke, Timmins, Thunder Bay and Sault Ste. Marie the week of April 25, 2011, for the purpose of holding public hearings.

(4) That the committee clerk, with the authorization of the Chair, post information regarding public hearings on the Ontario parliamentary channel and the Legislative Assembly website.

(5) That interested parties who wish to be considered to make an oral presentation contact the committee clerk by 12 noon on Thursday, April 7, 2011.

(6) That groups and individuals commenting on the bill be offered 15 minutes for their presentation. This time is to include questions by committee members and may be increased, subject to demand.

(7) That in the event all witnesses cannot be scheduled, the committee clerk provide the members of the subcommittee with a list of requests to appear by 1 p.m. on Thursday, April 7, 2011.

(8) That the members of the subcommittee prioritize and return the list of requests to appear by 9 a.m. on Friday, April 8, 2011.

(9) That staff of the Ministry of Northern Development, Mines and Forestry be invited to provide a technical briefing of up to 30 minutes to the committee at the commencement of the public hearings.

(10) That the deadline for written submissions be 5 p.m. on the final day of the public hearings.

(11) That the committee meet for the purpose of clause-by-clause consideration of Bill 151 on Monday, May 2, 2011.

(12) That the research officer provide the committee with a summary of presentations.

(13) That the committee clerk, in consultation with the Chair, be authorized, prior to the adoption of the report of the subcommittee, to commence making any parliamentary arrangements necessary to facilitate the committee's proceedings.

The Chair (Mr. David Oraziotti): Thank you, Mr. Bisson.

Mr. Gilles Bisson: Just for the record, my druthers would have been—I've said this in the House, and I just want to make it clear here in committee—I believe that this bill should have been held over until after the fall. I don't believe, quite frankly, that there is enough time to contemplate the type of change that we're trying to do now, that the government seems intent on trying to make happen this spring. This is an issue that is going to either plague or help northern Ontario for years, depending on what side of the issue you're on. I think to try to give this short shrift is really not the right thing to do for the north.

The Chair (Mr. David Oraziotti): Any further comments on the existing subcommittee report?

Mr. Randy Hillier: Yes, I'd just like to follow up there a little bit. This bill will have significant, profound and long-lasting effects on northern Ontario. It's certainly something that I believe we all have a very powerful obligation to consider, and consider thoughtfully, just what this bill is going to do to a very important sector of northern Ontario, forestry. It's not to be taken lightly. It's not to be taken in a rash or quick method. This is time for thoughtful deliberation and to ensure that we do hear from those people who are going to be affected and whose livelihoods are going to be impacted by this bill.

So I really do concur with the member for Timmins—James Bay that this is moving a very fundamental change of forestry through in a very short period of time, and for the members of the government side to keep that thoughtful deliberation in mind, just who and how this

bill impacts and what length of time it will take to modify things if we don't get it right this time around.

Mr. Gilles Bisson: Just a quick point of order to the clerk: The House is not sitting now. We finished the leader of the official opposition's remarks. Can we continue sitting?

The Clerk of the Committee (Mr. William Short): Until 6 p.m.

Mr. Randy Hillier: Is the House adjourned?

Mr. Steve Clark: The House is adjourned.

Mr. Gilles Bisson: I'm ask just asking the clerk.

The Clerk of the Committee (Mr. William Short): We're prepared to sit until 6.

Mr. Gilles Bisson: Okay. I was just double-checking. I just looked over and—

Interjection.

Mr. Gilles Bisson: No, I couldn't hear, I'm sorry. I couldn't hear that part.

The Chair (Mr. David Orazietti): Thanks for your comments and your comments. Further comment?

Mr. Michael A. Brown: I'm not exactly clear on the procedure here, Mr. Chair, but what I would like to do is move an amendment to the subcommittee report, striking numbers (2) and (3), providing an amendment to the date in number (11) from May 2 to April 18, and adding one amendment calling for the cut-off for amendments to be Friday, April 15, at 5 p.m.

The Chair (Mr. David Orazietti): Further debate on that?

Mr. Randy Hillier: Could you reiterate that? Then we would have some clarity. Go over that once again.

The Chair (Mr. David Orazietti): Mr. Brown has moved an amendment, and he has tried to clarify the specific points from this report that he would like changed, so I'll ask him to reiterate that if that helps for clarity's purposes here.

Mr. Brown, do you want to just go through that again?

Mr. Michael A. Brown: Striking points (2) and (3); substituting "April 18" for "May 2" in number (11); adding a new number (14), that the cut-off for amendments to be filed be by Friday, April 15, at 5 p.m.

The Chair (Mr. David Orazietti): Further comment or debate? Mr. Clark.

1610

Mr. Steve Clark: Thank you, Mr. Chair. I certainly didn't expect those amendments to come from the parliamentary assistant. I was going to speak in favour of what Mr. Bisson and Mr. Hillier spoke about earlier. I haven't been on too many road trip committees; in fact, I haven't been on any since I started. But I know that on the Far North Act, for example, I talked to people after those northern hearings were cancelled. There was a gallery full. I talked to one lady outside; she was crying because we refused to go to the north.

I agree with what my colleagues were saying: We need to slow down this process. You need to do it right. This is a major piece of legislation. For the three of us to be on one side and to have an amendment like this that would cut out those hearings in the north is absolutely

ridiculous. To speed up the time from May 2 to mid-April makes no sense whatsoever, Mr. Chair.

To me, we need to plan. We need to go and listen to people. In fact, I think we should be going to a heck of a lot more places than what was on number (3), not strike out (2) and (3) altogether. That's a slap in the face to northern Ontario. I'm surprised that the government would even propose such an amendment. It makes absolutely, positively no sense whatsoever.

The Chair (Mr. David Orazietti): Mr. Clark, thank you. Mr. Bisson.

Mr. Gilles Bisson: Can I ask the parliamentary assistant one question? Would you agree with my characterization that this bill is a fairly weighty bill as far as the changes it will make to the forest tenure system?

Mr. Michael A. Brown: It absolutely is an important bill—and subsequently, hopefully, an act—that will change the way that tenure is established, and therefore will change the way that our forests are—

Mr. Gilles Bisson: So it's fairly significant.

Mr. Michael A. Brown: It is a very significant one. The government has gone through, as you know, a large consultation program that has extended for a long time now. I know I was in your community in Timmins. The minister himself was in many communities. I don't have the list of everywhere we went, but we do have a large input not only of people whose business is determined by timber and how it's cared for and how it's allocated, but the very communities are decided by this kind of bill.

The government rejects what we see as not further public input but foot-dragging on the part of the other parties. This is a democracy. At some point—this bill has received second reading. It was not under closure. Members all had their opportunity to say what they wanted to say, and it shut down when people had no more to say.

We are at committee. We are about to hear, hopefully, two full days of public presentations to us. People can do this. This is 2011. Hopefully, we can do some of these things by audiovisual means, some of them perhaps just by audio. Many will want to come here. Many of the companies that are involved here are not unacquainted with the city of Toronto and the environs. These are very large companies.

So I think we need to proceed. The government is saying that we think this can happen in the time frame we are suggesting and that, given the times it's been in the public domain, people have had adequate time to make their presentations, and we're providing another opportunity on the dates we've described. So that's where we're at.

Mr. Gilles Bisson: So, to my point, the parliamentary assistant agrees with me that this is significant legislation.

Mr. Michael A. Brown: Yes.

Mr. Gilles Bisson: So therefore, I think that trying to rush this process—it's not a question of foot-dragging, but trying to rush this process of changing the entire forest tenure system by April 18 is a little bit beyond the pale.

To say that you've consulted—yeah, that's true. You did go out and consult. But I've heard from the Ontario Forest Industries Association, municipalities and others who say that what they see in this legislation is not what they talked about. What they wanted when they presented at these consultations is quite different. So this is a significant change not only in the legislation as far as how we change the tenure system and the allocation system, but it's also a change from what people originally conceived would be coming through as a result of the consultation.

I want to say categorically, this is not about my wanting to foot-drag. You can categorize it like that if you want. It is a democracy; you have the right to your opinion. But to me, it's not a question of foot-dragging. We're going to be changing the allocation system and the tenure system dramatically, and it will have effects, one way or another. There are people who are going to come to this committee who are going to say terrible things and others who are going to say wonderful things. The point is, when you have such a divergent view about what this is going to do, it seems to me we shouldn't be trying to rush the process.

I say to the government, I think this is wrong-headed. I think that people in northern Ontario—and I'm trying to be as un-rhetoric as possible here—feel very slighted by governments, particularly right now by this government, but in the past others who did not listen to what the people of northern Ontario had to say. There's been a long history of decisions over the last little while coming out of Queen's Park, decisions such as the Far North planning act that was to the chagrin of many, and now the forest tenure act and changes to the Mining Act. People get a sense that they're not being heard, and this is just another way that northern Ontarians are being told, "Do you know what? We know better at Queen's Park. We're smarter than you. We can come and implement a system that's going to solve all your problems. Don't worry your pretty little heads about it. We can fix it all down here at Queen's Park. We don't need to go to northern Ontario and hear what you have to say; you can call us by phone or do a videoconference and it can all be done in two days." I'm going to tell you, people aren't going to buy it.

I'm asking the government, for its own good, to back down on this thing. I don't think this is a fight that you want going into the next election. I would ask you to reconsider.

The Chair (Mr. David Orazietti): Further comment? Mr. Hillier.

Mr. Randy Hillier: Yes. To characterize the opposition and the third party as foot-dragging on this when we're just beginning to speak about the first government amendment—it's not the opposition parties who have advanced this amendment that we're discussing right now; it's the government side—but to characterize wanting to have the people who are affected by this bill engaged in the discussion and the debate is absolutely atrocious.

As the parliamentary assistant did say, it is more than just individuals and companies; it's the very communities

in northern Ontario. This is not to be taken lightly. The parliamentary assistant said, well, we can have these hearings here in Toronto because the very large forestry companies know Toronto and they may have offices down here. Well, I'm sure you realize there are a lot of small communities in northern Ontario which find it difficult and expensive to come to Queen's Park. I'm sure you've heard that on many occasions. Even at significant annual events such as ROMA and OGRA, a number of communities can't attend because of the cost. So you're being very dismissive of those very communities that you spoke of as you moved this amendment.

This bill is not just about Weyerhaeuser; it's not just about AbitibiBowater; it's not just about the large corporations. This bill is going to impact everyone. To suggest that two days in Toronto would be enough is very, very dismissive, once again, of northern Ontario.

I will say this: I attended those meetings earlier on the forest tenure review as well. It was not held just in Toronto; the parliamentary assistant knows that. You heard, if you attended a number of them—I've heard it—the government had to change their ideas after hearing the people of northern Ontario speak during that forest tenure review. And that's why we've seen this now being advanced in a much more pilot-type program arrangement, because I think it's obvious that the minister and the ministry, the government, were taken aback at what they actually heard in those communities during that forest tenure review process, and I'm still hearing from those communities.

1620

I am absolutely confident in saying that we're going to hear some different things if we take this committee to northern Ontario, to the communities that we've identified. These are the same communities that the forest tenure review was held in—and not just northern Ontario. I don't consider Pembroke northern Ontario, but forestry is a significant aspect and industry in Renfrew county and Pembroke. It would be worthwhile and reasonable to go out and visit those people.

Let me be very clear: Each one of these areas has its uniqueness in forestry. The forestry industry is not homogenous by any means. Presently, there are different tenure models in different areas. The companies, in how they do business, are different, and I think it really behooves us to go out and actually listen to them.

Once again, to reiterate this, this is going to have a huge impact for a significant period of time on forestry. We have an obligation to do everything to assure everyone, to our utmost ability, that we're going to get it right, because—heaven forbid—if we don't, it's not you and I who are going to face the consequences if we don't get it right. It's going to be Little John Enterprises, it's going to be McKenzie Forest Products; it's going to be all kinds of people who are going to feel the hurt if we don't get this right. I would really like to see the parliamentary assistant take those proposed amendments off the table.

The Chair (Mr. David Orazietti): Any further comments?

Mr. Gilles Bisson: It's a huge disappointment. I would like, for once, that what comes out of this place is something that everybody can buy into, that at the end of the day is to the benefit of northern Ontario.

The government has an idea about how to change the forest tenure reform. I'm sure that if we travel to northern Ontario, we're going to get quite a few who will speak opposed to it; you might even get some who speak to it. But the point is, it seems to me that we have a product here that at the end of the day is yet again going to divide us.

I don't know what the upside is in dividing the north from the south. It's really the sense in the north that, "Here we go again. Queen's Park is going to tell us what's best and we're going to be there, trying to pick up the pieces when everybody's gone." I just get really irked as well, as I think most people in northern Ontario do, that we're put in this situation again.

So I'm just asking the government: You have a number of seats in northern Ontario; you have more seats than we have in northern Ontario. I would just ask, on behalf of other northerners, that you consider allowing this to have some form of hearings now, but put this off until after the next election. It's not as if you need this to get you over to the next election and this is going to be a big win for you. There's no upside here. You do this change, you throw the change down—if you try to force the changes on northern Ontario, it will just backfire on you in the next provincial election.

This is a good exercise, to consult people on what you've worked on up to now, as far as what you think needs to change. Let's have some of those discussions with some hearings in Toronto and northern Ontario, and at the end of the day, let's not be in a rush to get this whole thing done, because it's not as if this has to happen now.

Number two, at the very least, if you're going to make this happen this spring—and that is not my wish. I hope to heck we don't do that, although it does look as if that's what you're going to do. I don't understand how you can do this without going to the north. You can make the argument that, yes, we've had consultations before, and in drafting the legislation we've had all these public meetings—and there's no question you had those; I'm not saying you didn't. They're not a figment of your imagination; they actually did happen. But the point is that what has come out is very different than what people were expecting.

I have people, on the one side, who represent the forest industry, who are mad as hell at this. I have people on the other side, who expected to see some sort of community forest model, and it really isn't there. You've got both sides, quite frankly, that are unhappy with the end product.

I don't understand how you can go forward and try to force this thing by April 18 and say, "We don't even have to go to northern Ontario because—you know what?—they can talk to us by phone or maybe they can have a videoconference if they can get to a Contact North site" or whatever it might be. And that should be suffi-

cient? I think that just flies in the face of the respect that we have to show the people of northern Ontario. I ask the government to reconsider on both points.

The Chair (Mr. David Orazietti): Okay. Thank you, Mr. Bisson—

Mr. Gilles Bisson: Otherwise, we will have a fight.

The Chair (Mr. David Orazietti): Mr. Clark.

Mr. Steve Clark: I'm calmed down now; I've taken a breath. I want to ask the parliamentary assistant: Your quote, if I get it correctly, is you've consulted up in the north; debate has collapsed, so you think you can proceed. Did I get that? Did I understand that right?

Mr. Michael A. Brown: Yeah.

Mr. Steve Clark: So all of the emails that I've received from people asking—I think there was one that I read this morning that talks specifically about Thunder Bay, asks about Thunder Bay. You all have got the same emails that I've received, so I just fail to understand why, in such a significant piece of legislation—I guess I echo what my colleague from Lanark—Frontenac—Lennox and Addington said about being reasonable.

To me, especially after what I experienced on this committee in regard to the Far North Act, Bill 191, and the many people that I met for the first time and that I talked to about significant impact on the north, whether you've extended consultation or not, you have to agree that when you have a bill of this impact—as Mr. Bisson talked about, a significant impact for both sides of the issue, both in favour and against the issue. When we receive these types of requests, we should give them due diligence, and we should deal with them. I just believe that it's very premature for us to be striking out all of these committee hearings given the fact that there are a number of members who may not have participated in the debate because they felt that we would have committee hearings—which is the norm—and then come back to the Legislative Assembly.

Listen, I know that my municipal life is a lot different than my life as a provincial politician. But I have to tell you, when I was involved with municipal governments—and I was involved in our association, in AMO—I travelled to the north. I valued that opportunity because, if I've learned anything, I've learned there are different challenges that face northern communities. I think we all agree, on this side, that having a consultation, having a hearing like we experience here in Toronto up north, I don't see, personally, the downside of that. I see it as a very positive experience.

As Mr. Bisson said, we're going to get people from both sides of the issue. I think the debate that we've had in the Legislative Assembly needs to be followed up by some citizen comments.

Again, I guess I echo the comments from Randy and Gilles in saying let's back off these recommendations. To me, they're counterproductive to this committee's operation.

The Chair (Mr. David Orazietti): Okay. Thank you, Mr. Clark, for your comments.

The amendment is on the floor right now. The amendment is what we would be voting on at first—

Mr. Randy Hillier: Are we not going to get a response back from—

Mr. Michael A. Brown: I've said what I needed to say. We need to move on. Northerners have had ample opportunity to comment on this.

I represent one of the largest forestry ridings in the province. The minister represents one of the largest forestry ridings in the province. The parliamentary assistant to the Minister of Natural Resources has a constituency that is very dependant on natural resources. I hear, in my constituency, about these issues all the time. My friends and colleagues hear about these issues all the time. It's not as if we're coming to this as a government uninformed.

People have the opportunity—I think you're missing this—of two days of public hearings to put forward views we haven't heard yet. They have the ability to put them in writing. They have the ability to make whatever comments they wish, if we can schedule it, by audiovisual or by phone, if necessary. What we don't need to do is delay this any longer.

1630

If the opposition has amendments they would like to make to the bill, I would be thinking about those today. I think the government is thinking about them today. We will be able to listen to the presenters and read their presentations and have plenty of time to come to a conclusion by April 18. The government continues to move on this amendment. I just really don't know what more there is to say from either side on this subject. It's time to go. It's time to move. It's time to do something.

The Chair (Mr. David Oraziatti): Okay. So—

Mr. Gilles Bisson: You provoked me on that one. I recognize—

The Chair (Mr. David Oraziatti): Is there anything new—obviously you can continue to comment if there's something new to add to the discussion.

Mr. Gilles Bisson: I'm not going to be long; I'm not going to drag it out. I'm just going to say that I recognize you come from a riding that has a large forestry sector, as the minister does and as I do. But I just got an email from one of your constituents in Dubreuilville. What is it all about? It's about wood allocation.

Mr. Michael A. Brown: That's about allocation; it's not about tenure. Don't confuse the two.

Mr. Gilles Bisson: It's about wood allocation. This particular bill will deal with how wood allocation happens in this province. There are plenty of people who are concerned in regard to what this is going to mean to their communities, and there's a lot of people who fear that at the end of the day, this is not going to fix the type of things that people think need to be fixed when it comes to communities like Dubreuilville and Wawa and Sioux Lookout and Smooth Rock Falls and the 30 communities in northern Ontario that are looking at how they're going to survive after the economy turns. This bill, in its present form, I very much fear is not going to do very much to help them. That's the view of a lot of people from northern Ontario.

The Chair (Mr. David Oraziatti): Mr. Hillier.

Mr. Randy Hillier: I'll just go back to the parliamentary assistant's comments that the government has heard these views and we don't need to—we're talking about constituents in forestry—and that there's no need to go much farther. It's already heard it. That, to me—but we're willing to still hear the views down here in Toronto from some people, some people who will be able to afford to and who have access to coming here to Toronto. But all those other people, all those other communities—your own constituencies—won't have that opportunity. I just find it incredible that you could have that position that you've heard it all and you don't need to hear anything else, but you're willing to allow the Abitibis of the world and some of the larger corporations to have face-to-face time with this committee.

Everybody who's travelled to the north, every member from the north, knows that the overriding sentiment in northern Ontario is that the people feel that they're not being heard, that they're not being respected, that the decision-making is happening down here in Queen's Park without regard for their very livelihood. The only way that that is ever going to be overcome is if we actually take the elected representatives to northern Ontario and have those open, honest, thoughtful discussions and demonstrate to people that they are, indeed, part of this process—they're not excluded from the process; they are integral to the process.

You don't have to be a wealthy individual or a large multinational to have the ear of elected representatives. Everybody can have the opportunity to express themselves to demonstrate how this piece of legislation is going to affect them. That's the important thing: How is it going to affect that person, so that we can mitigate those consequences with reasoned amendments when we go into clause-by-clause. How are we going to provide those reasoned amendments in clause-by-clause if we're just going to exclude 75% or 80% of the people who are impacted by this piece of legislation? The answer is obvious: We're going to come up a day late and a dollar short on this piece of legislation because we won't have done our due diligence.

Whoever the government of the day is down the road, they're going to pay the price. They're going to pay the price of having to clean up and wipe up the mess that's left behind from pushing forward with legislation that has not been clearly thought out and has not provided that opportunity for individuals to provide their input.

Once again, we haven't heard everything and we are not going to hear everything if we remain cloistered in Queen's Park and don't give northern Ontario communities the opportunity for this committee to go into those communities and actually hear the people on the ground, how they're going to be affected, and once again, the communities themselves, who can't afford to come down here.

The Chair (Mr. David Oraziatti): Thank you, Mr. Hillier.

I think everyone's points, at this point, are on the record and clearly noted.

The amendment is before us, so I'll call for a vote—

Mr. Randy Hillier: I wanted to call for a recorded vote.

Mr. Gilles Bisson: Just one second. There is a difference in regard to, should we—if the current recommendation of the subcommittee is voted down and we want to do an amendment, then there's some other things that I want changed. I don't want to vote on this as a package because if you're telling me you're not going to northern Ontario, then we've got to talk about what we can do that would be different to accommodate northern Ontario. That's not being done in these recommendations. So can we go one at a time?

You're proposing, basically, that we adopt everything but (2), (3); an amendment to (11), an add of (14), and I would argue that what we do is, we exclude (1) for now—

The Chair (Mr. David Orazietti): Sorry; just to stop you there for one second.

Mr. Brown has an amendment on the floor right now that deals with the items that have been brought forward. To be clear, the proposed amendment by the government is to eliminate point number (2) and point number (3), change number (11) to April 18 and add an additional point that says amendments need to be filed with the clerk by Friday, April 15.

If that amendment, which is on the floor right now, passes, that's not the only amendment that we could consider.

Mr. Gilles Bisson: I understand that.

The Chair (Mr. David Orazietti): If you have an additional suggestion that you want to add something in, we need to deal with the amendments one at a time.

We can deal with the amendment that's on the floor, and if that is the outcome of that, we can move on to the next proposed amendment before we agree to vote on the entire subcommittee report, because we need, ultimately, to have, at least at this point, two votes now: one on the amendment and one on approving the subcommittee report.

What's before us right now is the amendment that Mr. Brown has put forward. We're going to vote on that first, and if you have items that you'd like to add or amend, we can do that as well.

Mr. Gilles Bisson: Well—

Interjection.

Mr. Gilles Bisson: Go ahead, Randy. You were going to say something?

Mr. Randy Hillier: No, no, that's fine.

Mr. Gilles Bisson: First of all, we've already sort of had the debate, but essentially, what these amendments do is take away the ability of the committee to be able to travel to northern Ontario.

I just want to clearly put on the record, for those particular amendments, that we, the New Democratic Party of Ontario, on behalf of Andrea Horwath, our leader, and myself as critic are opposed to this by the government. We think that the committee should go to northern Ontario. Not doing so, we think, is wrong-headed on the part of this government and is not giving northern Ontarians

the respect that they deserve when it comes to this particular bill and to be heard on it.

The Chair (Mr. David Orazietti): Okay. I think the point's been made. You're on the record on that on a number of occasions. I think we're clear.

We're going to vote on the government's amendment at this point. A recorded vote has been called—

Mr. Randy Hillier: A recorded vote, and I'll call for a 20-minute recess for the vote.

The Chair (Mr. David Orazietti): Okay, a 20-minute recess. A recorded vote has been called for on the government amendment. Please be back at 5 o'clock so we can vote.

The committee recessed from 1639 to 1659.

The Chair (Mr. David Orazietti): Okay, folks, we're back to the amendment that's before us. A recorded vote has been called for on the government's amendment to the subcommittee report.

Ayes

Brown, Hoy, Levac, Ramal.

Nays

Bisson, Clark, Hillier.

The Chair (Mr. David Orazietti): The government amendment to the report is carried.

Further debate or comment on the report?

Mr. Randy Hillier: I'd like to move a motion, Chair.

The Chair (Mr. David Orazietti): Just one moment. The clerk is going to hand out the subcommittee report with the modifications so that everybody can have a look at that, and if there are any further proposed amendments, you can base them on that.

Mr. Hillier, you have an amendment?

Mr. Randy Hillier: I haven't got the revised one yet. Oh, there we go.

The Chair (Mr. David Orazietti): Mr. Hillier, you have a proposed further amendment?

Mr. Randy Hillier: Yes. I would move a motion that in light of the changes to the report of the subcommittee, our committee be live streamed and also that Skype facilities be set up in a central location in Pembroke, Timmins, Thunder Bay and Sault Ste. Marie, so that individuals who cannot attend, who are being prevented from being face to face with this committee—once again, the motion is that the committee be live streamed on the Internet and Skype facilities be set up in a central location in Pembroke, Timmins, Thunder Bay and Sault Ste. Marie.

The Chair (Mr. David Orazietti): Mr. Hillier, thanks for your amendment. I think that committee members are aware of what you're asking for. Traditionally, we've offered video conference or telephone conference capabilities. You're requesting a live Internet/Skype type of approach. We'll have to take a brief recess to determine whether that's possible and get back to you on that. I'm

not sure if the government has any comments on the proposed amendment.

Mr. Michael A. Brown: Clearly, we want to hear from as many people as we can. I'm not exactly aware of what technological opportunities may be available. Certainly we, as a committee, should try our best to ensure that people have the ability to communicate with us, either to attend here in Toronto or by audiovisual or any manner we have the technical capacity to do. The clerk could check with other communities to see what they've been able to do in this regard.

The Chair (Mr. David Oraziotti): Okay, we'll take a brief recess. Please don't go very far. We should have an answer for you very shortly.

The committee recessed from 1704 to 1715.

The Chair (Mr. David Oraziotti): Thank you for your patience.

Mr. Hillier has clarification on his amendment. If he wants to reiterate or clarify any aspects of the amendment he proposed, I think this is a good opportunity, and we can provide what information we can with respect to the technology that can support the committee. Go ahead, Mr. Hillier.

Mr. Randy Hillier: Is it possible that I can amend my own motion? I'll go for it: "That the committee be live streamed and Skype facilities be set up where possible through locations in northern Ontario."

Mr. Gilles Bisson: Just a question for clarification. That would mean that somebody sitting somewhere—wherever—who has a computer with a camera on it could do it from their own home, right?

Mr. Randy Hillier: That's right.

Mr. Gilles Bisson: Effectively, that's what it means; right?

The Chair (Mr. David Oraziotti): Right.

Mr. Steve Clark: Yes. And from the perspective that we've talked about, to me, the live streaming is a given. We do that every day for question period. We've done that in the past for the budget, prior to question period being covered. That's a given. It's the other issues that Randy's talked about that would provide the Skype facilities. That's the other point. There are two real points.

Mr. Michael A. Brown: Agreed.

The Chair (Mr. David Oraziotti): Any further comments? Mr. Bisson.

Mr. Gilles Bisson: The fact that the parliamentary assistant is agreeing is the reason I'm speaking.

Listen, I see this for what—

Mr. Michael A. Brown: Be careful what you ask for.

Mr. Gilles Bisson: Exactly; that's exactly the point.

I see what the Conservatives are asking for is an opportunity for northerners to participate in these hearings from northern Ontario using technology. Although I think that's an intriguing idea, and we've done it before on different committees when it comes to the opportunity for people to present, the issue for me is that it doesn't give—what we're essentially doing is precluding the opportunity for the committee to travel to the north.

Interjection.

Mr. Gilles Bisson: No, but I'm just saying—let me just finish. I want to put on the record very clearly that I don't see this as a substitution for what should happen. What should happen is that this committee should travel to those communities in northern Ontario and give northerners an opportunity to come and present, like we do in every other committee. Failing to do so—I've already put on the record why I think it's wrong—I think this particular move, although interesting, puts us back in the government's court, and in a funny kind of way, they get what they want: They get a couple of days' hearings; they don't travel to northern Ontario. I don't see this as a big victory.

I hear that you're trying to move forward and the Conservative caucus is trying to put forward a proposal they see as helpful; I understand that and I recognize what Mr. Hillier and Mr. Clark are trying to do. But although I love technology, I'm going to vote against it on the basis that it basically doesn't give northerners what they want, and that is for committee to go to the north.

The Chair (Mr. David Oraziotti): Okay. Your comments are noted.

Mr. Gilles Bisson: Record the vote, please.

Mr. Randy Hillier: Hold on.

The Chair (Mr. David Oraziotti): Mr. Hillier.

Mr. Randy Hillier: I do want this comment on here, because Mr. Bisson does make some very valid points. I also want to reiterate for my own purpose here that this technology solution is only being offered up due to the intransigence of the Liberal Party to take these live to northern Ontario. This is not a substitute; it's not meant in any fashion for future committees of this House to think that technology can be used as a crutch not to travel to those communities.

I do want to just put that on the record. This is a way to mitigate the failure of this committee.

The Chair (Mr. David Oraziotti): That point has been discussed amply today and voted on. You're offering up an opportunity for discussion and participation by northerners as part of this process. That amendment is on the floor.

Mr. Bisson?

Mr. Gilles Bisson: Very quickly, Chair: I'm not going to take more than a minute. I just want to make perfectly clear that I appreciate what the Conservatives are trying to do. They're trying to help northerners get to the hearings the only way they can, which is either to travel here, to come by Skype or to come by television. But I want to be clear: I'm voting against it on the basis of how I really don't believe this is the solution that we were looking for. What I wanted was for this committee to travel. On that basis, I'll be voting against it.

I'll ask for a recorded vote.

The Chair (Mr. David Oraziotti): A recorded vote has been called for.

Mr. Gilles Bisson: Can we have a 20-minute recess?

The Chair (Mr. David Oraziotti): Yes, you can have a 20-minute recess.

Mr. Gilles Bisson: Thank you.

The Chair (Mr. David Oraziotti): The committee will be finished at 6 o'clock this evening, for members, so any business that is not completed today will be carried over.

Mr. Gilles Bisson: Yes, that's fine.

The Chair (Mr. David Oraziotti): Folks, can you be back at 5:40 for a vote on the amendment?

The committee recessed from 1719 to 1739.

The Chair (Mr. David Oraziotti): All right, folks. What we have before us is the Conservative motion or amendment proposed to the subcommittee report. It's number 13 that you should have in front of you:

"That, if possible, the committee facilitate live streaming and Skype to locations in northern Ontario."

You called for a recorded vote as well.

Ayes

Brown, Brownell, Clark, Hillier, Hoy, Levac, Ramal.

Nays

Bisson.

The Chair (Mr. David Oraziotti): The motion is carried. The subcommittee report is amended and also includes that.

All in favour of the subcommittee report, as amended?

Mr. Gilles Bisson: A recorded vote.

The Chair (Mr. David Oraziotti): A recorded vote has been called for.

Mr. Gilles Bisson: Twenty minutes.

Interjections.

The Chair (Mr. David Oraziotti): We'll have to come back to vote on this.

Thank you. Committee is adjourned.

The committee adjourned at 1741.

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**Legislative Assembly
of Ontario**Second Session, 39th Parliament**Assemblée législative
de l'Ontario**Deuxième session, 39^e législature**Official Report
of Debates
(Hansard)**

Monday 4 April 2011

**Standing Committee on
General Government**

Subcommittee report

**Journal
des débats
(Hansard)**

Lundi 4 avril 2011

**Comité permanent des
affaires gouvernementales**

Rapport du sous-comité

Chair: David Orazietti
Clerk: William ShortPrésident : David Orazietti
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENT

Monday 4 April 2011

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Lundi 4 avril 2011

The committee met at 1405 in room 151.

SUBCOMMITTEE REPORT

The Chair (Mr. David Orazietti): Good afternoon, everyone. Welcome back to the Standing Committee on General Government.

We left off with a recorded vote being called for on a subcommittee motion that was before us. The subcommittee report was read into the record, so I'm going to call for a recorded vote.

Mr. Randy Hillier: I know it's on the floor, but I beg for indulgence here for a moment—

Interjection.

Mr. Randy Hillier: No?

The Chair (Mr. David Orazietti): There's no debate.

Ayes

Albanese, Brown, Johnson, Kular, Levac.

Nays

Bisson, Hillier, Ouellette.

The Chair (Mr. David Orazietti): The motion is carried, and the subcommittee report is adopted.

Mr. Gilles Bisson: On a point of order: Listen, the government has used its majority in order to decide that we're not going to travel to the north. That's fine. The only problem now is that we're going to have some timing problems trying to arrange whatever little bit of hearings that we have. I'd just like to know what the government plans to do to ensure that we're actually able to even advertise this at this point of the game.

The Chair (Mr. David Orazietti): There's no further debate on this. That's not a point of order. We'll have to have another subcommittee meeting to deal with anything further. We've got the report.

Mr. Randy Hillier: On a point of order: May I ask the committee, can we actually achieve the dates that have now been adopted and still provide for any advertising for stakeholders to proceed? April 7 is your cut-off date. Can the House get advertising out before that date effectively?

The Chair (Mr. David Orazietti): Mr. Hillier, I think everyone is aware of the deadlines here as far as the

subcommittee report goes. The ad will go up today. We'll meet these timelines.

Mr. Gilles Bisson: A further point of order after. You can let Mr. Ouellette go first; I'll go after.

Mr. Jerry J. Ouellette: Thank you very much. Being that I'm just coming to the committee now and reading the report of the subcommittee, (5) specifically states that interested parties who wish to be considered to make an oral presentation contact the committee clerk by 12 noon on Thursday, April 7. Is there a cut-off date, though? Does that mean that if anybody contacts the clerk after that period, they will not be allowed to present? Because it does not specifically say that they must contact. This gives an opportunity, if there's time allotted in the spaces, for individuals or groups to present.

The Chair (Mr. David Orazietti): I think we'll use the practice that's traditional here. Where we can accommodate individuals, we will, but there needs to be some guideline as to dates for individuals to make submissions. We'll do our best to accommodate folks, but these are the dates that the subcommittee has decided on.

Mr. Bisson, is it a point of order?

Mr. Gilles Bisson: Yes. I noticed that the committee gave us all the letters from the various people who wrote in from northern Ontario, asking for hearings to happen in northern Ontario, including Mayor Tom Laughren, Gary Marriott, Ron Vottero. I just want to make sure that they've been tabled—

The Chair (Mr. David Orazietti): Folks—

Mr. Randy Hillier: Chair, I do have one other point of order, and that is on the subsequent report put forth, that where possible, there be Internet streaming and facilities. I'd like to know if we've heard back—

The Chair (Mr. David Orazietti): Now that the committee has just passed the subcommittee report, the clerk is going to make every effort to make those accommodations.

Mr. Randy Hillier: But we're not aware of—

The Chair (Mr. David Orazietti): Well, we've just decided that we're moving ahead with this as of two minutes ago, so we're going to do the best that we can to make those accommodations.

Committee is adjourned. Thank you very much for coming today.

The committee adjourned at 1408.

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Second Session, 39th Parliament

Assemblée législative de l'Ontario

Deuxième session, 39^e législature

Official Report of Debates (Hansard)

Monday 11 April 2011

Journal des débats (Hansard)

Lundi 11 avril 2011

Standing Committee on General Government

Ontario Forest Tenure
Modernization Act, 2011

Comité permanent des affaires gouvernementales

Loi de 2011 sur la modernisation
du régime de tenure forestière
en Ontario

Chair: David Oraziotti
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STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
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Monday 11 April 2011

Lundi 11 avril 2011

*The committee met at 1402 in room 151.*ONTARIO FOREST TENURE
MODERNIZATION ACT, 2011LOI DE 2011 SUR LA MODERNISATION
DU RÉGIME DE TENURE FORESTIÈRE
EN ONTARIO

Consideration of Bill 151, An Act to enact the Ontario Forest Tenure Modernization Act, 2011 and to amend the Crown Forest Sustainability Act, 1994 / Projet de loi 151, Loi édictant la Loi de 2011 sur la modernisation du régime de tenure forestière en Ontario et modifiant la Loi de 1994 sur la durabilité des forêts de la Couronne.

The Chair (Mr. David Oraziotti): Good afternoon, everyone. We'll start the committee hearings. Welcome to the Standing Committee on General Government. Today we will be sitting until about 5 o'clock to entertain deputations on Bill 151.

MINISTRY OF NORTHERN
DEVELOPMENT, MINES AND FORESTRY

The Chair (Mr. David Oraziotti): We'll start off today by hearing from Mark Speers, the project director at the Ministry of Northern Development, Mines and Forestry. He'll take us through a technical briefing on the bill.

Good afternoon, Mark, and welcome to the standing committee. You can start by stating your name for the purposes of Hansard and then start when you're ready.

Mr. Mark Speers: Good morning. Thank you very much, David. My name is Mark Speers, and I'm the director of the tenure and pricing review project for the province of Ontario. Thanks very much, David, for the opportunity to make a presentation this afternoon: a technical briefing on Bill 151, an act to enact the Ontario Forest Tenure Modernization Act and amend the Crown Forest Sustainability Act.

Ontario is blessed with a vast and valuable public resource in its crown forests. What I will cover this afternoon substantially responds to some of the concerns and ideas that were expressed by people across Ontario as we conducted extensive public consultations into Ontario's forest tenure and pricing review process. It is consistent with the minister's announcement on January 13 to come forward with a modified approach—that announcement

was made in Thunder Bay. And finally, I believe it represents a measured and responsible approach to tenure modernization for the province of Ontario.

Let me start by providing an overview of the road we travelled to get to this point. This process really got going after the March 2009 spring budget announcement. There was a statement that we were going to initiate a review of Ontario's forest tenure and pricing system and we were going to consult widely as we did that: We were going to speak to the forest industry, the public, aboriginal communities and First Nations to get their input into ideas that we should consider, with a view of trying to improve the system.

Next, we developed a discussion paper that was released in August 2009, and it outlined three main components of the review process. It included allocation, licensing and pricing. At that time, when we went across Ontario to get public input into that discussion paper, it was welcomed that we were initiating the review and there was a broad consensus that change was needed and change was wanted.

This led us to develop a proposed framework paper that was released in April 2010, and the framework paper outlined a proposal to create local forest management corporations, between five and 15 of them across the province, within the area of the undertaking. While there was some support for this approach, many felt that it went too far, too fast. We listened carefully to those concerns that were raised and the feedback that we received from the broad consultations from both times around across the province. We also did additional work with the forest industry and others to develop a modified approach to forest tenure that was announced by the minister in January in Thunder Bay.

This modified, measured and responsible approach, which I'll describe in a little bit more detail shortly, was supported by many following that announcement by the minister. This led to the introduction of Bill 151 that would enable the implementation of this approach.

Before I get into the details of the approach that I'll talk about, I thought it would be a good idea to revisit some of the challenges that the forest industry was facing, not only in Ontario, but across Canada and even globally. First of all, our system worked reasonably well in better economic times, but even then, there were some problems, and these problems were magnified by the economic downturn that occurred, by the rising Canadian dollar, global competition and, maybe most importantly,

the crash in the US housing market. Unfortunately, as a result of these factors coming together, mills were idled, some were shut permanently, and many people lost their jobs as a result of that. It was very devastating for communities in northern Ontario. This led, in some cases, to sustainable forest licences being returned to the crown where companies have either closed their facility or gone into bankruptcy, leaving the crown responsible for management in those areas.

There was also significant underutilized timber. In the good times, Ontario cut between, on average, 22 million and 24 million cubic metres across the province. This dropped by almost half, almost 10 million cubic metres, at the height of the crisis. Even though only half of the wood was being utilized, some operating companies weren't able to get access to wood that was maybe closer to them and more affordable for them to use. New entrants were frustrated at not being able to access that timber as well. Why was that? It was because, by and large, most of the wood in the province of Ontario is committed to the existing forest industry through licences and some form of commitment. It wasn't very responsive to the changing economic conditions.

We also have an administrative pricing system that, while it served us well in dealing with challenges from the US and softwood lumber, was also challenged internally by companies within Ontario. Not only that; it too was not responsive to market forces such as supply and demand and distance to mills.

Coming out of that, we identified a number of objectives that we wanted to try to achieve by moving forward with tenure modernization. The first was that we wanted to adopt greater market forces to both allocate and price crown timber. We wanted to discourage the hoarding of crown wood, where companies had access to more wood than they could use or needed. We wanted to allow opportunities for new entrants to enter into the system and create a diversified market for Ontario's crown wood, and also for those who were operating to get access to wood as well. We also wanted to provide greater local and aboriginal involvement in the forest sector business.

I think some of you are following along in the presentations that are in your binders, and there's a map on slide number 4, I believe, that outlines what the landscape looks like in Ontario today. By and large, the province is covered by sustainable forest licences within the area of the undertaking. Really, there are four types of licence tenures in the province. The first is, there are single-entity sustainable forest licences. There are about 17 of those in the province today. Those are licences that are held by large corporate companies that operate in the province. They often hold a large pulp mill or sawmill. I'm not sure what colour they are there—sort of the darker colour. There's an aggregate of them in the north-western region and the central part of the area of the undertaking. There are also 18 shareholder sustainable forest licences. A shareholder sustainable forest licence is where a number of companies, both harvesters and mills,

come together to form a co-operative—another company—that holds the sustainable forest licence.

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There are also four crown management units in the province: the Whiskey Jack Forest, the Armstrong, the Big Pic and the Temagami. Three of those licences were formerly held by companies and they've returned to the crown, where either the company has closed a mill or where the company has gone bankrupt and the licence has returned to the crown.

There's also the Algonquin Forest Authority. The Algonquin Forest Authority holds a licence and an agreement to manage forest resources within Algonquin park.

Finally, there's one other that is characterized as a shareholder SFL. It's a little bit different in that it doesn't have shareholders; it's a not-for-profit corporation. That is the Westwind Forest Stewardship Inc., which is located in the southern region, just a little west of Algonquin park on your map. They have members and they have a board of directors that represent the broader public within the area of that management unit. They provide advice to a general manager that runs the corporation for them. That's sort of what the landscape looks like today.

I'm just going to go on to slide number 5 and talk, again, a little bit more about the objectives that we want to put in place. At the top of this slide, we're talking about moving forward within the next five to seven years. I believe that represents a measured and responsible approach to tenure reform within the province.

A couple of key points that I want to make on this slide: A modernized system would help create a more flexible system and enable us to respond not only to today's economic environment, but to the future economic environment.

A modernized system would improve access to wood and put more wood back to work. Existing companies that are using their wood would continue to have access to that, subject to availability through the forest management planning process.

By meeting these objectives—a modified system in which crown forest resources are made available—we can protect and create jobs, attract investment and make Ontario competitive while managing our crown forests sustainably.

We also want to move forward and look at using market forces to competitively market, allocate and sell crown wood. In the future, we would hope to create a benchmark timber pricing system. More on that in a moment.

As I mentioned, we want to establish mechanisms to address the hoarding of crown timber and we want to provide meaningful opportunities for local and aboriginal communities. This is one of the key things that we heard from folks when we travelled the province in our public consultation sessions.

Moving on to the next slide, slide number 6: What would change? We proposed a modified approach that would see the emergence of two new governance models that would hold sustainable forest licences. The first

would be local forest management corporations and the second would be what we're going to call enhanced shareholder sustainable forest licences.

We did introduce Bill 151 which, if passed, would permit the creation of the first LFMCs by subsequent regulation, and we're also bringing forward some proposed amendments to the Crown Forest Sustainability Act to support tenure modernization objectives.

The key point on this slide is the vision that we have at the bottom: That is, in the next five to seven years, we would expect to see the establishment of up to two local forest management corporations. We would see a significant shift from single-entity SFLs and existing shareholder SFLs to what we're calling enhanced shareholder SFLs. And maybe, at the end of the day, we're going to see a couple of single-entity SFLs still remain on the landscape.

Before we move forward too quickly, our intentions are to work with the forest industry, aboriginal communities, First Nations and others to identify criteria that we would use to evaluate the performance of not only local forest management corporations, but of enhanced shareholder SFLs and other governance models that we may have on the landscape to help inform the path that we would go forward.

I'm going to now get into the details of the local forest management corporation. Again, if Bill 151 is passed, it would enable the creation of these local forest management corporations by subsequent regulation. Our proposal would be to initially establish two as operational enterprise crown agencies. We've identified four objects of these corporations, and they would be:

First, to hold a sustainable forest licence and manage crown forests in a sustainable manner, and also promote sustainable forest management practices.

Secondly, we would want to provide economic development opportunities for aboriginal peoples.

Third, we would want the local forest management corporation to manage its affairs as a self-sustaining business entity that optimizes the value of crown timber while recognizing the importance of local economic development.

Finally, another key object is to set market, sell and enable access to a predictable and competitively priced supply of crown timber to the forest industry that is in need of that type of fibre.

We would establish a board of directors. That board of directors would be made up of local representatives who meet certain skills and qualifications to be able to meet their fiduciary responsibility associated with being on a board of such a corporation. They would be subject to the normal conflict-of-interest guidelines that those types of boards would have.

I've said that the board's responsibility is one where they keep their noses in and their fingers out. They're involved in the business planning, review and approval of a business plan for the corporation; strategic planning; human resource matters; and corporation bylaws. They're also responsible for the hiring of a general manager.

The general manager would be responsible to hire staff, to manage the day-to-day operations of the corporation, which includes things like meeting the terms and conditions of the sustainable forest licence that they would have, forest management planning activities, annual work schedule activities, compliance monitoring, supporting audits and reporting. They would prepare the business plan for review and approval by the board of directors.

The act also sets out the general governance structures, including, as I mentioned, the board of directors and general powers, the hiring of a general manager and the hiring of staff. The act also outlines financial matters, reporting and windup provisions to deal with the corporation.

The act also allows the LFMC to retain revenue generated from the sale of crown timber. However, the LFMCs would still be required to pay forest renewal and forestry futures charges to support forest renewal activities on an ongoing basis. The management area would have to be of appropriate size to make sure that there were efficiencies of scale built into the operation.

This is a very carefully crafted approach that we believe provides the right balance of government oversight while providing enough flexibility to run a financially sustainable business. It is accountable not only to the people of Ontario and the government but to the region in which it operates as well.

This type of agency, we believe, can be cost-efficient, run effectively and be financially self-sufficient. The Algonquin Forest Authority is an excellent example of a similar agency that has been operating in the province of Ontario for 35 years successfully.

Moving on to the next governance model we're proposing—and this is an important one as well. It's the enhanced shareholder sustainable forest licences. It's important because, as I've outlined, it would represent the majority of the management areas that would be managed by enhanced shareholder sustainable forest licences. An enhanced shareholder SFL would consist of a group of mills and/or harvesters that collectively form this new company to manage a forest area under a sustainable forest licence. There would be a board of directors made up of harvesters and mill operators within the area, along with more meaningful opportunity for local and aboriginal involvement in that business and in that corporation. There would also be established mechanisms to address the hoarding-of-wood issue, even within an enhanced shareholder SFL, so new entrants could be allowed an opportunity to access that, and provisions for on-ramps for new entrants to participate in that enhanced shareholder SFL model.

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The management areas there would also need to be of appropriate size to provide for efficiencies, and we would like to see some crown timber off these enhanced shareholder SFLs sold on an open-market basis. The reason for this I'll talk to in the pricing component in a minute.

Finally, the enhanced shareholder sustainable forest licences would continue to pay the crown charges as they

do today, including forest renewal, trust charges, forestry futures trust charges and payments into the consolidated revenue fund.

Timber pricing is the third component of the modernization. It's an important one as well, and we need to get working on this right away. For now, though, the existing system would remain in place, including all the payments into the trust that I mentioned and consolidated revenue. We would collect information from open-market sales on both local forest management corporations and enhanced shareholder SFLs over a period of time, say the next three to five years, in hopes of collecting sufficient data to support the development of a new timber pricing system based on more market features.

I've also mentioned that the local forest management corporations would in fact have the opportunity to retain revenue from the sale of crown timber. They would be able to use that revenue to support the objects of the corporation, and where they generated a profit from those revenues, they would be able to reinvest it into the forest and into meeting those objects. If they get to a point where they are creating a profit in the future in better economic times, there could be a dividend paid to consolidated revenue and the government.

Let us now speak about the proposed Crown Forest Sustainability Act amendments. In addition to the Ontario Forest Tenure Modernization Act that will enable the creation of the first two local forest management corporations, we are proposing to amend the Crown Forest Sustainability Act. These amendments are necessary to support forest tenure modernization and pricing modernization.

Some of the key features of the amendments include confirmation and clarification of the ability to issue a sustainable forest licence to a local forest management corporation without a competitive process.

We're proposing to make changes to section 28 that would give the minister the ability by regulation to create terms and conditions on forest licences, supply agreements and commitments. In section 28 today, the minister has the authority with respect to forest resource licences but not with supply agreements and commitments. This would level the playing field and provide the tools necessary to address tenure objectives.

The third thing is that the Lieutenant Governor in Council will be able to make an order based on a recommendation from the minister to cancel a sustainable forest licence supply agreement or commitment based on the grounds that are set out in the amendments to the CFSA. The three that are there today include: to issue an SFL to a local forest management corporation; secondly, where timber is not being used optimally, and this is aimed at addressing the hoarding-of-wood issue; and, third, for other reasons that would be prescribed by regulation.

The act also sets out limitations on remedies and proceedings, and limits the crown's liabilities in circumstances set out in the amendment. An example would be where there's a cancellation of a licence supply agreement or commitment.

The one area that I want to address before I move on to my last slide is with respect to wood movement out of the province of Ontario. I know that this is an important issue that's been raised on a number of different fronts, so I'd just like to provide a quick overview about that.

First a little bit of background about that wood movement: Very little wood moves out of the province of Ontario. Historically, between 2% and 4% has moved out of Ontario and mostly to Quebec. Secondly, given the current challenges that Ontario companies face, sometimes it's advantageous to be able to move some wood outside the province, and this provides for ongoing harvesting, transportation and silvicultural jobs, which helps maintain employment in the province of Ontario.

Even in good times there's a natural flow of wood that goes to other provinces, often a species or a specific grade. However, there's often a reciprocal wood flow that comes back to Ontario companies. In fact, from time to time—

The Chair (Mr. David Orazietti): Mr. Speers, sorry to interrupt. I just want to be clear: You've got five minutes left in your presentation.

Mr. Mark Speers: Okay, that's great. Thanks very much.

So from time to time, Ontario is a net importer of wood from other jurisdictions. Often, the wood that does flow out of Ontario is of low-quality fibre that cannot be used in Ontario.

Section 30 of the Crown Forest Sustainability Act deals with this. It's called the manufactured-in-Canada exemption and it deals with crown land; it does not deal with private lands. It deals with the movement of wood outside of Canada. That provision in the CFSA would remain, but as I said, it does not restrict the movement of wood to other provinces.

Having said that, we do have policies in place that require that a reasonable effort be shown to provide Ontario companies an opportunity to get access to wood that would otherwise move to Quebec, and this will not change.

Finally, on my last slide, we're going to continue to engage all stakeholders as we develop the final details, design and implementation provisions related to local forest management corporations and enhanced shareholder SFLs. We will continue to work with others—a forest industry working group, a First Nations forest sector technical working group—to establish criteria that we would use to evaluate local forest management corporations and enhanced shareholder SFLs. The results of this would help inform future decisions as we move forward.

As I started with, I believe that this modified approach addresses many of the concerns and ideas that were brought forward through extensive public consultations that we held across Ontario. The Ontario Forest Tenure Modernization Act and amendments to the Crown Forest Sustainability Act are consistent with the minister's announcement on January 13 to enable the implementation of tenure modernization. I believe that this approach

represents a measured, positive and responsible approach to modernizing Ontario's forest tenure and pricing system.

Thank you very much.

The Chair (Mr. David Oraziotti): Thank you very much, Mr. Speers, for your presentation. We have just a couple of minutes, if we have some very brief questions.

Mr. Hillier, go ahead.

Mr. Randy Hillier: Thank you, Mark. Listen, I just want to ask you—you know, I attended a number of those public consultations as well. It must be clear to you, as it was clear to myself and most people who attended those, that the outcome was already predetermined in advance, and what we have today in Bill 151—we knew that that was going to be the case in those public hearings, as they didn't allow any discussion on any other models or options. They didn't allow any discussion on productivity, regulations or ownership. We see that, even on the timber pricing, there's still nothing there.

All these were concerns that were spoken about but not allowed to be discussed during those public hearings. What was allowed to be discussed at those public hearings was very narrow. Is that correct?

Mr. Mark Speers: We held the public hearings across Ontario and we allowed people to provide input in the three broad areas that we're talking about: allocation, licensing and pricing.

Mr. Randy Hillier: So ownership, productivity, regulations, all the other major concerns about forestry were not allowed to be discussed—and nothing really to discuss. Here we are, harvesting about half the available fibre that we could be harvesting and we're still a net importer while all our fibre sits. We're still a net importer.

Thank you. I'll pass it over to the third party.

The Chair (Mr. David Oraziotti): That's time for the presentation, so thank you very much, Mr. Speers, for coming in today. We appreciate you being here.

Mr. Mark Speers: Thank you very much.

Mr. Gilles Bisson: One word?

The Chair (Mr. David Oraziotti): Yes, sir?

Mr. Gilles Bisson: I just want to double-check that if the township of James—anybody who dealt with the request by the community of Elk Lake, which asked to present. They didn't meet the deadline, but they have since requested to make a presentation to this committee. I'm just wondering if anybody has raised that. If not, I would do so on behalf of Elk Lake.

Both Jeff Barton, who is a community forester, and Terry Fiset, the reeve, had applied to present to committee.

The Chair (Mr. David Oraziotti): As is the practice, the individual is required to contact the subcommittee members. The clerk is given, then, the information. They would have to do that and we would have to get the approval of two of the subcommittee members to move forward. At this point—

Mr. Gilles Bisson: Well, we have the subcommittee here. Just for the sake of expediency, because we've only got two days, could the subcommittee agree? We've already

agreed to extend St. Marys Paper, which I thought was the right thing to do. I would ask the subcommittee to approve that Reeve Fiset and Jeff Barton be allowed to present.

The Chair (Mr. David Oraziotti): To present when? The time is—

Mr. Gilles Bisson: Wednesday. That's why we've got to do it today.

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The Chair (Mr. David Oraziotti): I'm sorry? That's why we have to do it today?

Mr. Gilles Bisson: We're going to be meeting on Wednesday.

The Chair (Mr. David Oraziotti): The Wednesday session is full, and we're backlogged on Wednesday, so unless the subcommittee wants to agree to hear that now—

Mr. Gilles Bisson: We can sit past 6 o'clock, as I've said.

The Chair (Mr. David Oraziotti): That has to be approved by the House.

Mr. Gilles Bisson: Well, if you could arrange it today, that would be great, but if not, Wednesday. Just for the record, part of the problem is that we're trying to rush through committee hearings on a bill that's going to affect northern Ontario. We're not even in the north; we're in Toronto, doing what should be done in the north, and we have a very truncated time to do presentations. I'm not going to—

The Chair (Mr. David Oraziotti): Can you just give me one second?

Mr. Gilles Bisson: Yes.

The Chair (Mr. David Oraziotti): If the three subcommittee members agree today that they can be heard today, they can be heard at 5 o'clock.

Mr. Michael A. Brown: Fine.

Mr. Gilles Bisson: Perfect; done.

Mr. Michael A. Brown: Done.

Mr. Randy Hillier: Absolutely.

Mr. Gilles Bisson: Thank you.

The Chair (Mr. David Oraziotti): Thank you. Next presentation.

Mr. Randy Hillier: Chair, on a point of order here: I'm just taking a look at this advertisement for these hearings and I'm wondering if you can answer why there was no mention in the advertisements that electronic presentations would be available or that the streaming would be available. After that lengthy discussion that we had to try to encourage more northerners being able to participate, there was absolutely no mention in the advertisement that streaming or Skype was available.

The Chair (Mr. David Oraziotti): Well, Mr. Hillier, my understanding is that the clerk put out advertising information that is standard for the committee, as is the practice, and they don't normally discuss how individuals can present. They obviously have to contact the clerk's office, and then they can find out how they can be accommodated. So it's not normally in the advertisement.

Mr. Randy Hillier: No, but it's also not normal that we stream these committee hearings or make Skype available, and we had a lengthy discussion on that particular subject. It is very disturbing to me that we go to all that length, after the government side shut down our hearings in the north, to facilitate people in the north having access to this hearing and we don't even let them know. We don't even mention that those facilities are available to them.

The Clerk of the Committee (Mr. William Short): So, Mr. Hillier, the directive from the subcommittee was to place an advertisement on Ont.Parl and on the committee's website, which was done. In the past, when we've had committee hearings, whether there's teleconferencing, videoconferencing or people showing up and making a presentation in public, we notify them of that once they've called and contacted us to make an oral submission.

We let them know that there was going to be Skype available for this instance, that there was going to be video live streaming, all of that. We let them know once they contacted us. So, as of right now, we are being live streamed on the website. There is a link on the website for live streaming, and if anyone requested teleconferencing, videoconferencing or Skype, we made those accommodations when the request came in.

Mr. Randy Hillier: Again, this was an exceptional case, making Skype available and even streaming this committee. I would have thought it would have been intuitive that we would have made that known to the people in northern Ontario.

Mr. Gilles Bisson: I think it would have been better if we had just gone to the north.

Mr. Randy Hillier: I agree with the third party. It would have been better to go to the north, but—

The Chair (Mr. David Oraziotti): Okay. We're going to move on to the next—

Interjection.

The Chair (Mr. David Oraziotti): No. Thank you very much.

Mr. Gilles Bisson: Just—please.

The Chair (Mr. David Oraziotti): Sorry.

Mr. Gilles Bisson: Please. No, no. It's not—

The Chair (Mr. David Oraziotti): We have folks who are presenting now, and we're going to get started.

Mr. Gilles Bisson: I just have a very quick question: You will contact Reeve Fiset? I don't need to, Clerk, just to be clear? I just want to make sure who's contacting who here.

The Chair (Mr. David Oraziotti): For the presentation today at 5?

Mr. Gilles Bisson: For Reeve Fiset. Will the clerk's office be contacting the reeve?

The Clerk of the Committee (Mr. William Short): If we have his contact information, we will contact him, yes.

Mr. Gilles Bisson: If you don't, come and see me.

The Clerk of the Committee (Mr. William Short): Yes.

Mr. Gilles Bisson: Thank you.

ONTARIO PROFESSIONAL FORESTERS ASSOCIATION

The Chair (Mr. David Oraziotti): Good afternoon, gentlemen. Sorry to keep you waiting.

Please state your name for the purposes of Hansard, and you can start your presentation. You've got 15 minutes, and any time you don't use will be divided among members for questions.

Mr. David Milton: Thank you very much, Mr. Chair.

We are the Ontario Professional Foresters Association. My name is David Milton, and I'm associated with my colleague Tony Jennings. We carry the designation of registered professional foresters, and we appear today to represent the points that have been raised by members of the Ontario Professional Foresters Association on the enactment of Bill 151.

The Ontario Professional Foresters Association represents professional foresters of Ontario and regulates the members' practice, assuring qualifications and competent practice within the scope that requires membership in order to practice "the development, management, conservation and sustainability of forests and urban forests" specified in the Professional Foresters Act, 2000.

The Ontario Professional Foresters Association and many of our members were participants at a number of the sessions during the extensive and lengthy period of consultation on the reform of tenure and pricing of Ontario's crown forests. The comments that were made were results of consultations within our membership. While an increasing share of our membership is involved in both private lands and urban forestry, many of the members of our association are knowledgeable and experienced in the Ontario crown land forestry tenure system and hold opinions beyond the scope of those submissions; for example, the role of forest companies.

Our comments on the bill—a copy of our presentation having been provided to the members of the committee—are based on suggestions to the ministry. As stated in both the prior submissions, the OPFA is primarily interested in commenting on aspects of tenure reform that relate to the sustainable management of our forests and the practice of forestry. Ecology, society and economy are considered to be the three pillars of sustainability. Only when each of the pillars is functioning well can we claim that we have reached sustainability. We believe that enhancing the profession of forestry is an important component in enhancing the sustainability of our forests.

I'm going to offer, with your agreement, Mr. Chair, the opportunity for our registrar and executive director, Tony Jennings, to make several points that are in our submission.

Mr. Tony Jennings: Thank you, David. We view Bill 151 as enabling legislation. We're reacting in part to the plans that Mr. Speers was talking about earlier, not all of which are reflected in the bill itself explicitly. But let me move through some of the points briefly so you can ask questions.

We've responded to concerns about the significant changes facing the forest economy by suggesting that a

variety of models be encouraged and allowed in the tenure reform which is being contemplated. Bill 151, as you heard a few minutes ago, has two models, and within those models there's room for some variation, we believe. But we would suggest the committee think about maybe amending the bill to allow for even greater emphasis on allowing a variety of approaches to the proper management and utilization of our forests in the area of the undertaking.

We called for an orderly transition, and you've heard that that's there. And we would encourage more than two pilot projects, if there are opportunities for more than two, based on volunteer willingness to go ahead. One of the issues, if I can just speak to that, is that if you don't have a number of things being tried, it's hard to tell what's working well or what's working better than the other things. So the more we can move in that direction, the better.

The suggestion that was mentioned earlier was five to 15, which was in the framework. We, along with a number of other parties, suggested that that's a low number. There is concern both with having 15 variations to the approach to utilization and care for our forests and with the removal of people from local view if you go to a small number of entities. So we're encouraging anything. There's nothing in Bill 151 that prevents a significant number, but there's nothing that requires it either.

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A concern raised by a number of our members is that the local forest management corporation's board must appoint a general manager, and that's viewed by a number of people as stating that they must employ the people who work for them rather than retain, for instance, a forest management company that offers that service. We think, reading from a legal standpoint, you probably could appoint somebody who's on the staff of a forest management corporation that the board wished to contract with, but you might want to clarify that that sort of thing is possible, again, allowing the variation.

As our past president stated, we believe that the balance of economic, ecological and social criteria reflected in the normal understanding of sustainability—there have got to be criteria for these local forest management corporations and for the enhanced corporations, but we think you may want to consider making that explicit in the bill rather than allowing it to be dealt with in the directives.

We suggest that local knowledge is critical, and in the implementation there's going to be a real challenge to balance the flexibility to staff the new organizations in a way that best suits the interests of the new organizations while protecting local knowledge. A lot of our members talk about "my forest," and that's because they've been dealing with it for a long time and they bring a lot of knowledge to bear, as do other local parties.

The Professional Foresters Act is explicit, so our members will be involved regardless of how these are organized, but one of the things that has raised a question in the past is whether or not there's a requirement for forest management knowledge in senior executive posi-

tions. We suggest that, at least for the LFMCS, which are focused strictly on forest management, there be an explicit requirement for a qualified professional forester in holding that job.

We're encouraged to see that various boards would be formed, the emphasis being on the good governance that Mr. Speers spoke about earlier. There's a challenge to balance provincial priorities with local perspectives in that. We would suggest the committee consider requiring that a professional forester be a member of the board, not more. That's a practice that currently exists with the regional advisory committees that advise the regional directors in MNR. It's a requirement and a commitment under the undertaking, and would make sense, we think.

The two models that are allowed do not appear to allow for a straight aboriginal forest corporation per se, at least as we understand it, but the board of directors can accommodate—and I think you heard Mr. Speers speak to that. The bill is silent on that sort of thing, so one of your questions is, do you want to be more proactive on that?

There are a number of issues around reinvestment. We support it and the idea that funds that were going to the province—they are actually relatively small and would be lost in the rounding of any budget presentation. So reinvesting locally can make a lot of sense. Specifically, we would encourage anything that would make it explicit that forest health be a focus and that protects forest research, particularly where you're changing from the current single forest licence entities now. If we move too far away from that, then there's a question as to whether the corporations that primarily view themselves as mill owners and look to the forest for wood supply will invest in things like the science co-op, etc. There is a need for continued growth in that regard.

Finally, again we don't have a specific recommendation but, going back to our comment about the need for flexibility and innovation if we're going to bring the forest economy back to anything like it was before, there's a question for the committee in thinking whether the number of specific filings and approvals that are reflected in the bill will, when they're into administration, allow that flexibility. Can the government in power, can the bureaucracy that I used to work in for 25 years, tolerate some level of risk-taking and variation?

Again, we don't have an answer to how that is done, but it's one of the challenges of balancing public protection of the environment, economy and social values with business success.

The Chair (Mr. David Oraziotti): Okay. Thank you very much for your presentation. We've got time for one question. Mr. Bisson, you're up first, if you have a question.

Mr. Gilles Bisson: I think the biggest question is one you sort of raised at the end, which is, if I've got this right, that the change of tenure may reduce the willingness by forest companies to invest. Did I hear you correctly?

Mr. Tony Jennings: We're worried about whether research would be maintained.

Mr. Gilles Bisson: So why be in such a hurry to change something so complex in such a short period of time? Shouldn't we take our time and try to do this, if there are changes to be made, in a more thoughtful way? Because this whole thing will be done in about three weeks.

Mr. Tony Jennings: The speed, from our standpoint, is coming after the bill gets through. We did recommend, and there is a response that there would be, an orderly transition. There are some pilot projects to be tested first. So that is the issue from our standpoint: How fast do you implement this? When we went to the first round of consultations that the ministry carried on, there were a large number of people calling for change. The question is, what is the change? How broad? How flexible?

The Chair (Mr. David Oraziotti): Thank you very much for your presentation. That's the time we have today. Thanks for coming in.

ARBORVITAE ENVIRONMENTAL SERVICES LTD.

The Chair (Mr. David Oraziotti): Our next presentation: ArborVitae Environmental Services. Good afternoon. Welcome to the standing committee. You've got 15 minutes, as you know. Any time you leave will be divided among members for questions. You can start by stating your name and you can start when you like. Thanks.

Mr. Tom Clark: Thank you very much. My name is Tom Clark.

Mr. Jeremy Williams: My name is Jeremy Williams. Honourable committee members, Mr. Clark and I would like to present to you our thoughts regarding Bill 151. We're both consultants with each more than 25 years of experience working in Ontario, and we've been consulting for more than 20 years. We've worked for a range of clients in many of the forests across Ontario. We have a very good understanding of the forest sector, the forest, and the issues that presently affect it. Our handout package includes a fact sheet plus brief biographies of us, and also a copy of the presentation that we've prepared.

We've been active participants in the tenure discussion since the minister's announcement in 2009 that tenure would be reviewed. Our contributions to the tenure and pricing discussion have included the preparation of a discussion paper called Revitalizing Ontario's Forest Tenure System: Foundation for a 21st Century Forest Economy.

We've conducted extensive consultations with foresters and company people throughout the province. There's been outreach to experts both within the province and externally, and we've also made public presentations and had public workshops in Thunder Bay, Chapleau, Pic Mobert and at the Lakehead and U of T faculties of forestry.

In other words, we've been very involved in this discussion, and we're very pleased to say that Bill 151 includes many of the principles and suggestions that

we've offered in our discussion paper, so we're supportive of this bill.

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I included in the handout a quotation from Nassim Taleb from his book *The Black Swan*. It says, "History and societies do not crawl. They make jumps.... Yet we like to believe in the predictable, small incremental progression." The point of this quotation is that change in society doesn't generally manifest itself in a smooth line of incremental progression; changes are more likely to be discontinuities as thresholds get breached and counter-ailing forces develop to almost every trend. The current forest tenure system that we have, in essence, extends back to the beginning of the last century when forestry was viewed as a means of development and industrialization. This approach served tenure very well for many decades; however, the most recent financial crisis has made it evident that the sector needs fundamental change, and Bill 151 will bring about some of the elements that we feel are needed to revitalize the forest sector and take better advantage of forest productivity. We think that there are a number of elements within the sector that need change and tenure is just one of those, but it's an important one.

Our next overhead talks about some of the ways in which the current tenure system facilitated the collapse of the forest sector and, as was mentioned earlier, about 50% of the wood that was cut three years ago is being harvested today. As you know, many mills have closed, many people are out of work and it's a bleak sector these days.

The current sector discourages the entrance of new businesses, it stifles market forces and signals, it treats the forest as a cost centre rather than as a value-creation centre; and it excludes meaningful aboriginal and local community involvement.

Of these points, perhaps the most important is the treatment of the forest as a cost centre. Basically, forest management is viewed as a cost to be minimized while meeting the legal requirements of the Crown Forest Sustainability Act. For those who are certified to a third party standard, the standard requirements must also be met. However, there's no incentive anywhere in the system for forest managers to seek out buyers who would be willing to prepare more for the resource and, as a result, there is a widespread perception that our forest has little value. We believe that this conventional wisdom could be overturned through measures that are contemplated in this bill.

If we jump a couple of more slides to the one headlined "Local Forest Management Corporations," we view this as a key component of the bill. We believe that these corporations will have the opportunity to take a value-creation approach as opposed to a cost-centre approach toward viewing the forests, and the involvement of local communities and aboriginal people in decision-making is a significant improvement over the current system. As Mark mentioned, a similar approach has been in place for more than 30 years in Algonquin park, and the Algon-

quin Forest Authority has come through the recession in better shape than almost any other forest manager in the province.

Mr. Tom Clark: As a current board member and the first chair of an SFL company in central Ontario, I support this modernization. We started this 10 years ago. When Westwind was formed, we started down the road of tenure modernization. I'm encouraged to see that all stripes of government have moved this along, and I think this is a further step in that direction.

One of the points we want to make is around the current governance issues with most SFL companies today. This current bill will bring some fresh air to this system that's been in place for a long time and that needs some updating. We agree with the previous presenters from the OPFA that this adds to the spectrum of tenure arrangements in the province and is a good contribution.

One of the aspects of this is local participation in forest management. I think everybody accepts that. This is a mechanism to allow that to happen. There are excellent local business people around—lawyers, accountants, bankers. They should be on the boards of SFL companies; they're not right now.

Section 5 of the act speaks to the objects of the corporation. These are well written and would be good objects for any forest management corporation.

Right now, Ontario's forests are regarded as cost centres for mills. This is a fundamental philosophy that is a problem. Forest management is basically a cost line item for making forest products. Of course, it's understandable if you're making lumber or you're making paper. But if your job is to get wood to work in this province and to grow more trees, then cost-centre thinking is a problem. Around our board table, I can tell you, it's hard to get the industry guys to think creatively and to think about getting more wood working, because they're focused on their mills.

In our next slide, "LFMCs and Enhanced SFLs," one of our points is around rescinding wood supply commitments. We don't mean that in a broad-based way; we're only referring to long-dormant commitments. We basically see LFMCs converting what are now these obscure relationships with government into a long-term wood supply contract, which is actually a business arrangement. There are a lot of people out there who are looking for wood. They'd be willing and more than able to buy it, even on a short-term basis. Wood that's not being used under long-term contracts should be made available on an almost instant basis, some kind of a short-term spot market. LFMCs, in practical terms, are going to affect a very small portion of Ontario's land base, probably the more economically challenged forests.

Enhanced SFLs, as we evolve into them, can be built with some of the lessons from LFMCs. The possibility of aboriginal SFLs is finally on the landscape after an awfully long time.

What we're saying is we need to put wood to work, modernize governance, maintain our world-class environmental record—we're the largest contiguous land

base of Forest Stewardship Council-certified land in the world. It's a remarkable record. Our industry has put us there, and as part of it, I'm very proud of that. We see this as a continuation of that development.

I think we would wind up by saying Bill 151 is good for the industry and it's good for the province. It should be passed. But it is, as our previous speaker said, part of a broad tenure revitalization that must continue after this bill is passed.

The Chair (Mr. David Oraziotti): Thank you very much for your presentation. We've got time for a question. Mr. Brown?

Mr. Michael A. Brown: Thank you for your presentation, and thank you for coming today. Just for some context, I represent a large forestry constituency, Algoma-Manitoulin, which is kind of from Sudbury through to Manitouwadge. So management of the forests is an important issue to us. If I hear you right, you think we need to be moving this faster, not slower, in terms of getting models out there. Everybody talks about "the north," but there's no north; there are a lot of different norths, depending on where you are. Would I be paraphrasing you correctly in saying that we should move forward more quickly?

Mr. Tom Clark: More quickly—this system has been in place for 100 years, and it's been talked about now for several years. It's time to move on. People need the change right now. It's not a complicated bill.

Mr. Jeremy Williams: We feel that this approach also allows for a greater range of diversity, of different approaches, than is present right now, and that's a good thing, for the reasons you mentioned.

Mr. Michael A. Brown: Is there a concern on your part that this would affect the viability of mills in the area? There is some concern that big companies that make big decisions about allocating capital across their international borders would find this an uncompetitive thing to do.

Mr. Jeremy Williams: I don't believe that there's a concern, because in the LFMCs, we would like to see commitments being replaced by long-term contracts. Those would be contracts that would be legally enforceable, and they would have much more in the way of mechanisms to adjust prices depending on prevailing conditions and so on. They could also be evergreen, so they could be renewable after five years. Being legally enforceable is something that the current commitments are not and even the SFLs are not. So in our view, there's actually a stronger legal basis under the proposed system than exists right now.

1500

Mr. Tom Clark: Bankers want 20 years. No ifs, ands or buts, they want 20 years. We're fine with that.

Mr. Michael A. Brown: Thank you.

The Chair (Mr. David Oraziotti): Thanks. A brief question, if you've got one.

Mr. Randy Hillier: Thank you. Mr. Clark, I see that you have some sort of business or professional relation-

ship with the Ministry of Natural Resources, according to the bio, but what's not on here is—

Mr. Tom Clark: It's not a business relationship, sir. I do it as a volunteer, actually.

Mr. Randy Hillier: Arborvitae Environmental Services—just what is that business? Give us a little bit of who your clients are and how you earn an income from forestry.

Mr. Jeremy Williams: The company I work for is Arborvitae Environmental Services. Our clients tend to be the provincial government, the federal government—actually, governments of various provinces.

Mr. Randy Hillier: Any private sector clients?

Mr. Jeremy Williams: Yes. We've worked for the OFIA before; as well, for forestry companies, yes.

Mr. Randy Hillier: Okay, thanks.

The Chair (Mr. David Oraziotti): Thank you. That's time. Appreciate it. Thank you very much for coming in this afternoon. We appreciate the time for your presentation.

THUNDER BAY CHAMBER OF COMMERCE

The Chair (Mr. David Oraziotti): Our next presentation is the Thunder Bay Chamber of Commerce, Harold Wilson. Good afternoon and welcome to the committee.

Mr. Harold Wilson: Thank you very much.

The Chair (Mr. David Oraziotti): As you're aware, you've got 15 minutes for your presentation and any time will be shared among members, so you can start. Just state your name and you can get going.

Mr. Harold Wilson: My name is Harold Wilson. I am the president of the Thunder Bay Chamber of Commerce. Our chamber represents over 1,000 members, covering all sectors of the local economy. In addition, I'm also the chief operating officer of the Northwestern Ontario Associated Chambers of Commerce, representing over 2,300 businesses that are members of chambers throughout our region. A great many of those businesses are part of the forest industry directly and a great many more indirectly.

We appreciate the opportunity to make this formal presentation to the committee this afternoon and to outline a number of concerns we have with the forest tenure reform legislation in its current form as Bill 151. I say "current form" because there has been a history of fluctuations in language and intent which I will outline later in this presentation.

The issue of tenure reform has been the focus of considerable review due to its long-range implications for the economy throughout northern Ontario, and the Thunder Bay Chamber of Commerce participated in all opportunities to provide input throughout this process to date. Most of the Ministry of Northern Development, Mines and Forestry's August 2009 strategic discussion document concentrated on suggestions to improve current forest management; the overarching issue concerning the future of the forest industry in Ontario was barely ad-

ressed. Much of the document concentrated on issues relating to managing the forests, not better maximizing the value of the forest resources, which should include better-paying and skilled jobs, investment, and research and development.

Our core forestry enterprises may be undergoing a major transformation, but they still need to be supported by having the province establish the ability to access long-term fibre sources and reasonably priced energy to allow for the development of expensive infrastructure.

We welcome opportunities for new entrants, either as partners or new direct users. We need to diversify the forest industry portfolio and have set measurable goals. Wood pellets should be utilizing the wood waste stream, not replacing current usage for high-quality fibre.

At one time, Ontario had the highest and best use of the sustainable fibre. This was approached by ensuring that the best wood first went to a sawmill, with the residue then transported to a pulp and paper processor. With the advent of biofuels and the creation of pellets, this policy must continue to apply but with a focus on highest and best employment creation possible. The main processor of fibre should continue to be the sawmill, with the residual going to pulp and paper and the remainder, including slash, burned and diseased fibre, being allocated to the bioenergy field.

When the draft of forest tenure was reviewed in May 2010, our board took the position that the chamber ensure we met with area firms that were both large and small, established and prospective, to determine whether there was a fine line we needed to be aware of in addressing the government's proposal. We soon discovered that our forestry industry businesses were unanimously opposed to the recommendations, and we conveyed this at the public session.

Our main concern now with Bill 151 is the same as we expressed on numerous occasions since the proposal was rolled out in Thunder Bay last May: The LFCMs are unproven and their widespread implementation could have a detrimental impact on our forest industry as this legislation may very well devalue forest licences and impact a company's ability to attract financing. As opposed to the many options likely presented in the consultation process embarked on in August 2009, only the single LFCM option was foisted upon us.

While we question the likelihood that this plan will yield either cost savings or enhanced access to fibre supply, we have been supportive of the concept of initiating two pilot projects which would then be assessed and reviewed over a five- to seven-year period. We also identified that the reforms suggested could be counterproductive to the wood supply competition initiative of the ministry, which we have strongly supported.

The effort by the ministry also did not reflect earlier advice particular to forest tenure reform by Dr. Robert Rosehart in his Northwestern Ontario Economic Facilitator Report released in February 2008, specifically recommendation 8.2.1. For example, new forest authorities were to have active representation by forest users,

and a clearly defined dispute resolution mechanism would be put in place; neither of these features is in the ministry's local forest management corporations option.

We were satisfied that over the course of 2010, it appeared that many of our concerns and recommendations were being addressed in the legislation as it was developed. However, issues have arisen with the legislation in its current form which are contrary to the advice and previous support of the business community.

In fact, Minister of Northern Development, Mines and Forestry Michael Gravelle outlined support for the chamber's position in our chamber offices January 13, when he revealed the province's plans for the forest tenure review initiative. Our decision to host the minister for his announcement had followed considerable discussion by our board, because we had been such vocal opponents of the original proposal. I also had discussions with industry reps and MNDM&F personnel regarding our concerns. We were satisfied that our advice provided since last May had been adopted. The minister was sincere in his efforts to address the concerns of business, as conveyed January 13. The legislation crafted which followed undercuts his commitment.

When Minister Gravelle introduced enabling legislation to set up the LFMCS in late February, it was immediately evident that the legislation was broader than the pilot projects that had been outlined to us on January 13. Something, again, had been lost in translation.

Our main objection is with the LFMCS. Currently, section 3(1) of the act states: "The Lieutenant Governor in Council may by regulation incorporate one or more Ontario local forest management corporations as corporations without share capital." We request the committee amend section 3(1) to read: "The Lieutenant Governor in Council may by regulation incorporate no more than two during the first seven years from the date the act comes into force, Ontario local forest management corporations as corporations without share capital."

In addition, Bill 151 in its current form increases the authority of government to cancel licences, commitments and supply agreements for any reason without recourse to the affected companies. Again, this will greatly reduce investor confidence, a key shortcoming we have consistently identified.

Outside of this particular process, our chamber also awaits government action regarding our 2010 resolution on the need to establish in law, through regulations, that there will be 26 million cubic metres of available fibre for industrial use on a sustainable basis for the creation of wealth in the province of Ontario. This sustainable level is consistent with the statement made by Minister Gravelle on November 26, 2009, at the provincial wood supply competitive process announcement in Thunder Bay.

Our resolution also expressed the need for socio-economic impact analyses prior to adopting new legislation that can affect industry in Ontario, such as the proposed Endangered Species Act. Last May, the Ontario Chamber of Commerce unanimously supported this resolution.

We had specifically asked the Minister of Natural Resources to talk about these and other ministry policies

when she addressed our membership in December. Unfortunately, these topics were not addressed, and much of Minister Jeffrey's presentation was on broader provincial initiatives.

The issue of taking the responsibility for wood fibre allocation from the Ministry of Natural Resources and moving it to the Ministry of Northern Development and Mines had long been a topic of discussion. Indeed, it was one of the recommendations made when I served on the Northwestern Ontario Smart Growth Panel in 2002-03. One mistake when the forestry branch was brought under the Ministry of Northern Development and Mines is that the corporate culture went unchanged. How this legislation has rolled out is testament to that.

The MNR is not the organization to lead us to economic prosperity, as their track record so richly demonstrates. Over the past 25 years of my experience, beginning with crown land as a development tool, the MNR has consistently demonstrated that they follow a regulatory culture rather than an entrepreneurial attitude. Indeed, their approach to development is based on keeping something bad from occurring, as opposed to making something happen. A total lack of development meets this prime goal and that, therefore, would be a win. Their track record in the wake of the forest crisis and Ontario's manufacturing decline speaks for itself. While mills were shutting down, prospective new investors, some of them international, were informed that there was "no wood available."

Moreover, employees of regulatory agencies, when faced with a reduction in activity from the existing resource sector, often go in search of additional targeted firms or increasing their presence in existing operations, which our chamber members have seen in abundance. When business is faced with revenue shortfalls, we seek ways to trim our operations. Government has not sought a similar response, and the business community has been the recipient of their need to "get busy or get laid off."

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Throughout the north, the mantra should be to maximize value. The provincial wood supply competition, announced by Minister Gravelle in November 2009, was to proactively make use of a resource that has been languishing, which had been the main impetus for forest tenure reform. This had the strong support of business and municipal leadership across the north, and is why we were so enthused that the minister was addressing it.

However, the plodding nature of this effort to work through the competition has been painful for all involved, including the province. The wood supply competition could have been completed much earlier had the assessment criteria been transparent and tied to maximizing the value of the resource. A weighting for jobs, innovation, partnerships, new markets and products, financial viability and other criteria would have made the assessment and subsequent awarding of wood much easier, and we would be in a better position as a province to be realizing the investments that would have come and the accompanying jobs and increased tax revenues. Both

forest tenure reform and the wood supply competition have been affected by the Ministry of Natural Resources' mindset and have proven to not respond effectively to business opportunities and needs.

Finally, I want to address the standing committee's methodology in proceeding with this critical piece of legislation.

On March 25, 2011, the Thunder Bay Chamber of Commerce sent a letter to the Chair and committee members of the Standing Committee on General Government to request that a hearing on Bill 151 be held in Thunder Bay prior to third reading in the Legislature. We requested that Thunder Bay be included to ensure that a full understanding and discussion of the bill, its changing scope and its potential effects occur where it will have the greatest impact. We have still not received any response from the committee, nor from our own local MPPs, to that letter.

The plan to limit hearings to Toronto is unacceptable, and the response that we could participate through video-conferencing assumes that recommendations need only be made to be considered. The consistent feedback we and others have provided over the past year has yet to be included in the legislation. Therefore, we need to be here in person to further press our issues and not rely solely on simply providing input.

The government's soaring rhetoric on economic zones, public policy institutes and the northern growth plan does not measure up to their actions. What could be more important to northern Ontario's growth, to our economic zones or as a public policy review than one about the future of the forest industry in northern Ontario? Despite the expressed concerns of northern Ontario communities and businesses, the government appears to be going ahead with legislation that could have dire consequences to our economy without coming to northern Ontario to properly discuss it.

This would ensure that a proper review of the proposed new system took place. If it is an experiment, call it an experiment. If it is regime change, call it regime change. By keeping the act open-ended, there are no controls and no recourse. We strongly urge the committee to accept the amendment to limit the LFMCs to two, and review in five to seven years.

We thank you for your attention today and await any questions that you may have.

The Chair (Mr. David Oraziatti): Thank you very much for your presentation. Time for questions: Mr. Bisson, if you've got something brief.

Mr. Gilles Bisson: Let's get to the last point that you make. So here we are: A bill that's going to affect primarily northern Ontario, decisions made by the committee and the government majority not to travel to the north. What does that say to the northerners, in your view?

Mr. Harold Wilson: It stems right back to the issue about consultation and whether that input is being valued. I will admit there were a lot of consultations that took place ahead of time, but when you don't see that being

reflected in the legislation, nor when other commitments have similarly not been put forth, you'd like to see them come up because obviously we need a bigger discussion. We need a much broader discussion about this issue rather than specifically small time frames to talk about this with the committee. That's what would have been availed had we been in northern Ontario.

Mr. Gilles Bisson: Should we be in a rush to pass this legislation in the next couple of weeks?

Mr. Harold Wilson: Given the consequences of this legislation, I don't hear a lot of clamouring where I'm from that this be passed.

Mr. Gilles Bisson: So is there anybody in northern Ontario the Liberals haven't pissed off? I'm just wondering: Why this fight? I just ask you the question strictly from a fellow northerner—

Mr. Harold Wilson: I will admit that we were very surprised, especially with writing to local MPPs—and I know that has been the case all across. To suggest that video teleconferencing would do it was not the kind of response we were looking for.

As I said, this is serious legislation; this has a serious impact on all of us, so we want a serious discussion on this legislation. As I said, we've had some really good discussions. Throughout 2010, we were very encouraged, after May, by what we were hearing. Yet, as we take a look at the legislation, we're not seeing that in evidence. There does seem to be a disconnect or something lost in translation between what is being suggested by us, and even advice that they seem to be taking, and then taking a look at the legislation per se.

The Chair (Mr. David Oraziatti): Okay, thank you. That's time for your presentation.

GREENMANTLE FOREST INC.

The Chair (Mr. David Oraziatti): Next presentation: Greenmantle Forest. Good afternoon. Welcome to the Standing Committee on General Government. You have, as you're probably aware, 15 minutes for your presentation. Any time you don't use will be divided among members for questions. Start by stating your name, and you can get going. Thanks.

Mr. James Harrison: Thank you. My name is James Harrison, and I am the general manager for Greenmantle Forest Inc. With me this afternoon was to be Gary Laine. He is a logger and a shareholder in Greenmantle. But in one of those rare occasions, Porter is two hours late, and so that's why he's not here.

Interjection.

Mr. James Harrison: Pardon me?

Mr. Randy Hillier: I said that if we had taken a charter up north, you wouldn't have to worry about that.

Mr. James Harrison: Greenmantle Forest Inc. holds the sustainable forest licence for the Lakehead forest. I have included in your package, on the last page, a map of Ontario which shows the Lakehead forest. At the end, I'm going to have a geography test and see how well you do.

The Lakehead surrounds Thunder Bay and extends from the US border from west of Thunder Bay to Nipigon. Greenmantle is comprised of 35 shareholder/loggers. Most of the loggers are family-run businesses, and some are third-generation loggers on the Lakehead forest. Fort William First Nation and Red Rock Indian Band are shareholders, and they contribute greatly to the diversity we represent. We do not have any mills attached to our sustainable forest licence.

Greenmantle loggers contribute hundreds of thousands of dollars in forestry stumpage fees each year to the Ontario treasury. The goods and supply needs of our member loggers generate millions of dollars in spending and spinoff economic activity in our local business community.

We are a self-financing organization that requires no subsidies, grants or bailout funds from the Ontario government. We help satisfy the fibre procurement needs of various wood-utilizing entities, ranging in size from the giant AbitibiBowater complex in Thunder Bay right down to one-person independent sawmillers. We also supply hundreds of local individuals with the fuel wood needed to heat their homes each year.

Greenmantle has its own in-house forest management staff. Our licensed foresters prepare forest management plans and allocate timber stands to loggers. They also monitor harvesting activities on a regular basis to ensure that all compliance and environmental protection laws and standards are observed. When harvesting is complete, our reforestation responsibilities are planned and conducted according to MNR guidelines.

Our management staff and member loggers alike liaise regularly with local MNR staff. We enjoy a good working relationship with the MNR. The combined efforts of MNR and Greenmantle staff and our member loggers, plus the quality replanting work performed by our local reforestation contractors, are yielding excellent forest management results in the Thunder Bay area.

We are a community-based organization. We regularly host open houses advising the public of harvesting and replanting activity on the Lakehead forest in our jurisdiction. Our doors are always open for members of the public to address their public forest concerns. We acknowledge these concerns, and whenever possible adjust management plans to accommodate these concerns. We regularly meet with camp—and in southern Ontario, I gather, cottage—owners. And this is quite an important point: Our loggers do not live in urban Thunder Bay. They live in the surrounding areas and have an excellent understanding of the interests of the area residents.

To put it in simple terms, the sustainable forest licence system that has evolved on the Lakehead forest in the Thunder Bay area works well. It provides jobs and economic security for loggers and foresters alike. It provides the fibre needed by local mills, it generates dollars for the local business community, and it ensures that the forests of tomorrow will be planted today.

So why tamper with a system that works well? Why try to fix something that doesn't need fixing? We fully

acknowledge that the system that works well in Thunder Bay is not necessarily a model that should be duplicated right across the province. But by the same token, we reject the notion that the one-model-fits-all approach advocated by Bill 151 is a model the entire north should adopt.

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We do not believe that forest management units in Ontario will be better managed by local forest management corporations. We do not believe that the local forest management corporation will yield higher resource income for the government or result in better forest management. Above all, hard-pressed, taxpaying Ontarians do not need poorly managed local management corporations banging on the doors of government begging for financial assistance when grandiose schemes for revenue embellishment do not materialize. We work hard and pay stumpage to the Ontario government and do not support a system where the stumpage dollars go to the LFMC to pay for their management costs. Why would the Ontario government subsidize the LFMCS and not all other sustainable forest licence holders in Ontario?

The member shareholders of Greenmantle currently have substantial investments in their Greenmantle shares. Many are still carrying bank loans ensuing from share purchases in the recent past. Given that the proposed legislation includes no provisions for compensation if our existing shareholder-based SFL is terminated, some of our members face the very real possibility of severe financial hardship in their old age, particularly if the new LFMC system proposed negatively impacts the ability of member loggers to continue their traditional level of harvest from the Lakehead forest. We believe it would.

We advocate, instead, that the government adopt a go-slow approach when it comes to implementing substantive change in the forest tenure model. We should not be adopting wholesale change that scares away local, national and international investment in our provincial forest industry. Rather than wholesale change, we advocate focused change. Let's be less concerned about tampering with forest models that work well and focus on change in areas where change is justified.

I wish to thank you for this opportunity to make this presentation and would be happy to answer any questions.

The Chair (Mr. David Oraziotti): Thank you very much for coming in today and thank you for your presentation. We'll start over here to my right. Mr. Brown, a question?

Mr. Michael A. Brown: Thank you, Mr. Chair, and thank you for coming. I have a few questions. The first one would be—I didn't quite understand your organization. Is this a private for-profit company or is it more of a co-operative nature?

Mr. James Harrison: It is a co-operative of 35 small loggers who got together, formed a company and, up until two years ago, were in partnership with Buchanan Forest Products, and the most recent share purchase that I

referred to was that they bought out the Buchanan share after that company went into receivership.

Mr. Michael A. Brown: It sounds like a system that's working very well. How do you decide who receives the wood? How is that allocation made by your company?

Mr. James Harrison: The group put together an allocation committee, and they work with the management staff of Greenmantle when we allocate the harvest. Levels of harvest were determined at the start of the company based on a five-year level of activity. At that time, there were 48 shareholders on the licence; it has reduced in size. And so if you had cut 100 hectares a year on average for five years, you would be allocated 100 hectares of forest for harvesting.

Mr. Michael A. Brown: How would the wood be priced?

Mr. James Harrison: The members sit down with the various mills and negotiate the price.

The Chair (Mr. David Oraziotti): Thanks, Mr. Brown. We need to move on. Mr. Hillier, your question?

Mr. Randy Hillier: Thank you very much for coming here. It's unfortunate the other fellow couldn't make it down.

I would like to ask you this question: I've seen a real chill in the level of apprehension from a number of people in forestry who have licences depending upon the ministry, and I want to get your opinion and your thoughts about the willingness for people in forestry to be open and honest and critical of a ministry or their policies when that minister can arbitrarily revoke your licence, your allocations or anything else that is involved with your livelihood. Expand on that a little bit.

Mr. James Harrison: It's a huge issue. I didn't have enough time to cover every issue, but to have a minister who could take away a harvest licence is a huge threat to the loggers that I work for.

Mr. Randy Hillier: Essentially, it could destroy your whole business model, all your investments, and no compensation provided, not even any criteria established that would be deemed justifiable. There are no restrictions whatsoever. Of course, that's in this new proposed Bill 151. I'm sure that must be sending a chill throughout forestry throughout northern Ontario.

Mr. James Harrison: Certainly, to our group of loggers it's a huge worry. Their biggest fear would be—yes, I heard the rhetoric today in regard to two—there's nothing to stop them from implementing LFMCs right across the province. We would be out of business.

Mr. Randy Hillier: Right on. Thank you very much.

The Chair (Mr. David Oraziotti): Mr. Bisson, you had a quick question?

Interjection.

The Chair (Mr. David Oraziotti): Okay. Thank you very much. We appreciate you coming in today. That's time for your presentation.

GP NORTH WOODS LP

The Chair (Mr. David Oraziotti): The next presentation is GP North Woods. Good afternoon, gentlemen.

Welcome to the Standing Committee on General Government. As you're aware, you've got 15 minutes. If you can state your names, and any time not used will be divided among members for questions.

Mr. Dan Dedo: Thank you. We'd like to start off, firstly, by thanking the committee for our having this opportunity to come and speak to you about something that is very, very important to our company. Our presentation is broken into two or three pieces. We're going to give you a little bit of background on our company. We're going to share with you GP North Woods' concerns about the legislation, as it's currently written, and some suggestions of where the government may want to spend some time as they consider amendments to this legislation.

The Chair (Mr. David Oraziotti): Before you keep going, can you just state your name for the purposes of our recording Hansard? Thank you.

Mr. Dan Dedo: You read my mind. My name is Dan Dedo. In my capacity as general manager of wood and fibre supply, I am responsible for the fibre supply for GP North Woods operations in Ontario.

I'll turn it over to my colleague to introduce himself.

Mr. Paul Brown: My name is Paul Brown. I manage government and public affairs for Koch Companies in Canada.

Mr. Dan Dedo: For those who don't know, Georgia-Pacific is relatively new to the province. Georgia-Pacific is one of the world's leading manufacturers of tissue, packaging, paper, pulp, building products and related chemicals. The company employs on three continents—South America, North America and Europe—approximately 40,000 people.

One of those locations which joined the Georgia-Pacific family last summer is the oriented strand board mill that's located in Englehart, Ontario. This mill employs 200 people directly and approximately 800 people indirectly. The bulk of the indirect employment are folks who are engaged in the harvesting, delivery and regeneration of the forest.

We feel that we have a good and efficient asset in Englehart. We work hard to be productive and innovative. We plan on continuing to invest in the facility to ensure that it remains efficient and competitive. But in order for that to continue to occur, we need a reasonable degree of certainty that our fibre supply will remain reliable and cost-competitive.

Put another way, the key input for the manufacture of OSB—and for those who aren't familiar with the industry, OSB is a misnomer for flakeboard, which is the things that go on the outside of your house or on the roof of your house. It's the things that get nailed to the two-by-fours. With greater than 80% of the facility's fibre coming from crown land, it is very important for us to continue to have a reasonable degree of certainty that the fibre source for this operation remains predictable from the supply perspective and competitive from a cost perspective. Ensuring a reliable and competitive fibre supply is necessary, along with a competitive asset, processes

and employee base, to ensure the viability of the operation. I'm not going to use the three-legged stool analogy, because it gets overused, but I will leave you with that thought in your mind, that one cannot be excluded for the business to be successful.

1530

Georgia-Pacific has been and remains supportive of the provincial government's January 2011 announcement as it was laid out: the framework and the intent for a measured approach to tenure and pricing reform. Among other things, the framework included the long-term limited testing of the local forest management corporation pilot model against a predefined set of criteria.

At the same time, it was to focus on initially converting the remaining single-entity sustainable forest licences to the next-generation co-operative SFLs. Fundamental to this approach, and ultimately to the success of our business and others, is a competitively priced, secure and reliable supply of fibre.

The current tenure system does require some adjustments. We've heard previous speakers talk about how it has been in place for 100 years. We're not convinced it has been in place for 100 years—there have been several versions over time—but we do believe that there are some opportunities for adjustment of the current pricing system. But one of the key strengths of the current tenure and pricing system is its ability to provide Ontario mills a competitive advantage, and that competitive advantage comes in terms of the long-term fibre security and predictability of supply. Competitive advantage in Ontario equals long-term fibre security and predictability of supply.

In its present form, Bill 151 has the potential to erode that competitive advantage by:

Firstly, increasing the government's authority to arbitrarily cancel or amend licences, commitments and agreements;

Secondly, removing the existing rights of notice and appeal, as well as options for legal recourse if your licence agreement or commitment was to be amended or cancelled;

Thirdly, broadening the government's access to confidential, competitively sensitive information; and

Finally, providing no certainty on the path forward for tenure and pricing reform.

Initially, in January, we were speaking about limited testing of pilot LFMCs and accelerated conversion to co-op SFLs. The current bill, as it is written, doesn't seem to have that limitation built within it.

So we would like to suggest that Bill 151 would be more effective if it solidified the path forward. What that means, for tenure and pricing reform, includes the limited testing of LFMCs and the accelerated conversion to co-operative SFLs; secondly, to maintain the current level of government authority to cancel fibre licences, commitments and agreements; thirdly, to maintain the wood supply commitments to companies that have used their allocated fibre. The key words there are, "that have used their allocated fibre."

The final suggestion for improvement in the legislation, as it currently exists, is to maintain the current rights of notice and appeal and legal recourse that presently exist, so to remove the clause that seems to speak to immunity within the bill.

Finally, in closing, Georgia-Pacific remains committed to working with the government to modernize the tenure and pricing mechanisms within Ontario, while at the same time strengthening the competitive advantage and the business growth environment enhanced by a secure, predictable fibre supply. With that point, I will open the floor for questions.

The Chair (Mr. David Oraziotti): Thank you very much for your presentation. We do have a few minutes for questions. Mr. Bisson, do you have any questions?

Mr. Gilles Bisson: A couple of questions. The first place to start, I guess, is in regards to the financing in mills. Currently, you have OSB mills. If you need to raise capital for whatever reason, you either go to your shareholders or you go to the lenders. If I heard you correctly, you're saying this bill puts that at jeopardy. Explain that a little bit for people to understand.

Mr. Dan Dedo: Probably the simplest way to answer that, Gilles, is, if you go back to earlier in the presentation, the key number was 300 mills in our system. All of those mills compete with our one shareholder for capital. This legislation, as it's currently written, gives us a disadvantage competing for that capital. It provides the potential of uncertainty from a fibre supply perspective where there once was certainty of fibre supply.

Mr. Gilles Bisson: The current system has been pretty resilient against countervail duties. There's been, however, many challenges on the part of the US in regard to trying to prove that Ontario is subsidizing when we truly don't subsidize our industry. In your view, does this, moving in this direction, challenge that position that we're in?

Mr. Dan Dedo: I'm not trying to sidestep your question: That's probably a better question to ask the lumber guys. We produce OSB and we've not been part of that conversation.

Mr. Gilles Bisson: Okay. I guess the last part is, should we be trying to rush through this process? Is this something that has to be done now?

Mr. Dan Dedo: No. I think it's more important to get it right than to do it now.

Mr. Gilles Bisson: Thank you.

The Chair (Mr. David Oraziotti): Mr. Brown, a question?

Mr. Michael A. Brown: Mr. Dedo and Mr. Brown, thank you for coming. I appreciate your point of view because you do represent a multinational company operating on—three continents, did you say? So you would encounter a wide variety of arrangements for fibre supply, I would guess, from a wide-open bite on the private market sort of approach in some places to probably fairly prescriptive supplies in other areas.

You realize the government intends to do two of these and to do them, first, over a five-to-seven-year model,

have a look at them, see how they work, and leave the other SFLs in place until that is determined. You've made some other constructive suggestions, I might add. Following that approach, would you think that's a prudent way to move ahead?

Mr. Dan Dedo: We do business in a number of different jurisdictions. One of the things that is distinctly different about Ontario is that 80% of our supply is held by one owner. In other jurisdictions where we do business, we have multiple owners and multiple consumers. So that makes it very different.

We believe that it's important to try things, and we think the LFMC model is something to be tried in a controlled, measured way against a set of criteria.

The Chair (Mr. David Oraziotti): Thank you for the comments. I'm going to need to move on. Mr. Hillier, briefly.

Mr. Randy Hillier: Thanks very much for coming today. I've got a question for you. Georgia-Pacific, of course, operates around the world. Is there any other jurisdiction that you've ever operated in that you're aware of where the government has taken away all legal remedies and recourse and has put forward an arbitrary mechanism to remove your ability to operate? Has that ever happened in any other jurisdiction that you're aware of? I might also ask, would you have purchased the mills if you had that knowledge that the government might arbitrarily remove fibre supplies, allocations and licences, and without any legal remedy available to you?

Mr. Paul Brown: Mr. Hillier, thanks very much for that question. I appreciate it. Typically, it would be challenging to move into a jurisdiction that essentially removes the rule of law from your capacity to operate. There are some fundamental aspects of this legislation that tend to aim in that direction, and we are very concerned—

Mr. Randy Hillier: That remove the rule of law?

Mr. Paul Brown: When you have immunity and you remove the capacity for appeal, that adds a certain, direct challenge to the rule of law. There's no question about that.

It's a complex matter of investment. What you cited there would certainly be one of them that would go up on the chalkboard, so to speak, when the company makes an investment.

Mr. Randy Hillier: Is there any jurisdiction that you work in now where that government could eliminate your ability to do business without any legal remedy? Do you operate in any countries like that, and if so, which ones?

1540

Mr. Paul Brown: Our shareholders tend to make very dedicated decisions on where they invest. Certainly, Canada and Ontario is a jurisdiction that they eye as being competitively advantaged, and that's why we are investing here. To my knowledge, no, we haven't invested in any area—

Mr. Randy Hillier: In a place like that.

Mr. Paul Brown: No.

Mr. Randy Hillier: Well, I hope everybody here is hearing your presentation today. Thank you very much.

The Chair (Mr. David Oraziotti): Thanks for coming in. That's time for your presentation.

Mr. Dave Levac: On a point of order, Mr. Chair: If you have a written report of your presentation, if you could give it to the clerk so all of us could have that with the key points that you've made today. Is that all right, Mr. Chair?

The Chair (Mr. David Oraziotti): Yes, absolutely. If you have a report or comments and you'd like to submit them, we can distribute them to members of the committee.

NORTHEAST SUPERIOR REGIONAL CHIEFS' FORUM

The Chair (Mr. David Oraziotti): The next presentation: Northeast Superior Regional Chiefs' Forum. Good afternoon, gentlemen. Welcome to the Standing Committee on General Government. You have 15 minutes for your presentation. Any time that you do not use will be divided among members for questions. You can start by stating your name whenever you're ready and make your presentation.

Chief Keeter Corston: I'll just introduce myself. My name is Chief Keeter Corston, Chapleau Cree First Nation, member of the Mushkegowuk Tribal Council, member of Nishnawbe Aski Nation. Colin's going to do the presentation, so I just wanted to be here with him to introduce myself. I'm the secretary of the regional chiefs—

Mr. Dave Levac: Sorry, I couldn't hear you.

Chief Keeter Corston: Chief Keeter Corston, Chapleau Cree First Nation.

Mr. Dave Levac: Thank you.

Mr. Colin Lachance: Good afternoon. My name is Colin Lachance. I'm the corporate secretary to the Northeast Superior Regional Chiefs' Forum, an ad hoc group of First Nation chiefs that have territorial interest in and around the Chapleau crown game preserve.

The chiefs came together four years ago in search of a solutions-based approach to a number of core issues which I can only hope that the committee is fully apprised of. What we have to say here in a very short period of time, and drawing specifically to the punch line on page 4 of our submission, is that after \$1 million worth of dollars scraped together through special projects, funding proposals and arm-twisting, the chiefs have come to the conclusion that we can make far more wealth from the land, keep more of that wealth in the region for both municipal and First Nation communities, rebuild the ecological integrity of the boreal forest, and maintain a balanced relationship with our existing industry partners, all at the same time. This means that we're into a significant transformative change agenda, and tenure reform is long overdue. Multitudes of royal commissions on forestry in Ontario have advocated this since the first one in 1904, I believe, so this is big. For every complex problem, there's a solution that's easy, cost-effective, simple and wrong. So before the honourable Gilles

Bisson gets to ask the question, you've got to take this slow, because there's lots of stuff here that has to be looked at.

Take a look at the philosophy of the chiefs' forum model outlined on page 4. People said that we couldn't get First Nations to work together; we did, and it took a lot of sweat equity. People said that we could never get chiefs and mayors to work together in a region; we have a protocol agreement between six chiefs and six mayors. People said that we would never get industry to buy into an ecological agenda; we did, and we have a signed agreement with Tembec that if we can help them through new innovative approaches in shoring up their economic bottom line, they will trade us ecological considerations in order to rebuild the ecological integrity of the Chapleau crown game preserve. Not to mention the back end of this, which is that this committee and the government of Ontario are staring right in the face of a tremendous amount of legal, political and business risk over the unfinished aboriginal agenda. By partnering up at the local and regional levels, we disperse a lot of risk that people are preoccupied with, but we put it straight forward, right in front of the table, instead of pretending that it doesn't exist.

If we streamline industry activities through integration, particularly in energy, and if we add to it value-added forestry—and our particular focus is on torrefication, because it has tremendous dividends for actually using poplar, which is treated as a weed, as the single greatest economic dividend. It grows faster than any other tree, it's environmentally friendly to the moose, we don't have to silviculture, and we don't have to aerial spray. So the dividends are great, and we need to invest in these new, innovative ideas.

Natural tourism and cultural tourism: \$1.1 billion a year generated from tourism, and with the downturn in the forest economy, nobody's sneezing at that money anymore. It's in perpetuity if it is managed properly, so we have to think along these lines.

The non-timber forest products industry is blossoming. We're looking at a regional blueberry farm that's world-class and that should be up and running within the next five years. We also have carbon credits as an idea.

Every one of these partnership opportunities, every one of these innovative approaches—every single one of them—has a tenure challenge associated with it, so we need to look at all of these at the same time. This is like musical chairs: Everybody has a seat at the table, but everybody has to stand up, take three steps and then sit down again. You can't have this working well unless it's all coordinated. This is the proposed solutions-based approach to the regional chiefs' forum.

When we take a look at the main barriers, or what you would call, from a risk management perspective, this legal, political and business risk, take a look at page 6. When we talk about tenure, let's start with Webster's dictionary.

Remarks in Algonquin.

I don't use these worldly definitions from a western perspective, but I have a constitutionally protected right

to look at my land and my resources and the people in the region from an aboriginal cultural point of view. But I can't put that in front of this committee today, because they're not very amenable to the kinds of concepts that we're talking about. They are in this paper; we'll let you read that at your leisure. Strictly from a western Webster's dictionary, "tenure" is about ownership. I'd hate to bust anybody's bubble here, but the resources do not belong to the crown. Under a western rule of law—participatory democracy, egalitarianism, constitutional framework—the resources belong to the people. And then you have the aboriginal rights-based agenda in there too. So what we have is basically 100% regional participatory engagement between chiefs and mayors, and reaching out to the Métis groups, saying we have a better way to manage our resources for the people, by the people. It's constitutionally protected and consistent with treaty rights.

But guess what. We're having a hard time getting some traction, some buy-in. This is why we need to take it slow. This process needs to run its course so that we can have a beacon of hope that will help implement new and innovative ways of transforming the way that we see our relationship with the land.

We do know, from a recommendation perspective, therefore, that we need to broaden the scope of this exercise in support of a more comprehensive and holistic approach so that international obligations, including the one that's in the pamphlet that we handed out earlier today, statutory requirements and mandated responsibilities of a multitude of provincial agencies are giving due consideration to the critical policy, and regulatory gaps can be filled and overlaps avoided.

We need to fully embrace the constitutional concepts of egalitarianism and participatory democracy, not to mention Supreme Court of Canada instructions pertaining to consultation and accommodation of aboriginal rights, as a foundation to a more robust approach to forest tenure reform.

We need to fast-track previous provincial commitments to develop resource revenue sharing agreements and government-to-government relationships with First Nations. Advancing an aggressive forest tenure reform process in the absence of these two critical pieces is like closing the barn after the horses have gotten out. How are you going to talk about tenure and ownership if you're not going to talk about resource revenue sharing, which is already a political commitment of the government of Ontario?

We need to pay closer attention to international trends. We did an international best-practices review that looks at this concept—the acronym is stated there—of community-based natural resources management approaches. We've reviewed over 200 international studies, and they're all saying the same thing: Resource decision-making is more effective when it's brought down to the local and regional level. We still need rule-of-law rules, and we still need overarching principles to be maintained, but let the people who are closest to the land express their

innovativeness. This was the number one conclusion that came out of the forest tenure reform paper that Jeremy and Tom did, in collaboration with the chiefs' forum. If we can have all that innovation coming out of forestry when we have an archaic and antiquated approach to tenure, what kind of beautiful ideas and opportunities will blossom if we actually promote innovation directly inside that legislative framework?

1550

We need to work more closely with aboriginal organizations committed to a solutions-based approach. As you probably know, the Chiefs of Ontario and its First Nations forestry task group is starting to get geared up.

I should also state that when we talk about these pilot projects, one of the considerations that MNDFM is giving is to enhance the co-op SFL process. I'm pleased to say that MNDFM—Mark Speers, in fact, who is in this room here today—has given us a letter stating that they're willing to enter into a contribution agreement with the chiefs' forum to continue to invest in the relationship-building, reconciliatory, tear-down-the-racial-barriers approach to regional partnerships. So we see that being a huge dividend in working together in collaboration with all the parties that have a stake in the tenure reform process.

We definitely need to tear down a whole bunch of tensions in the region pertaining to aboriginal attitudes and ill-conceived ideas about aboriginal rights, through a series of cross-cultural workshops, and we definitely need to embrace the energy of what we call the convergence agenda in a multitude of other ways that support reconciliation, including the development of common understanding, mutual respect and trust, as prescribed specifically by the Supreme Court of Canada.

This is a taste of what we've been up to for the last four years.

The only message that we really want to give here today is that tenure needs to be reformed. It needs to be done broadly, holistically and in a participatory, democratic way, so that all those who have a stake in the land and the resources have a meaningful say in the way we shape this process into the future.

Meegwetich.

The Chair (Mr. David Oraziotti): Thank you very much for your presentation. Mr. Bisson, we have a couple of minutes for questions.

Mr. Gilles Bisson: You've already answered my first question. I appreciate that.

You came here with this declaration on indigenous rights. Explain why you did that. I think it might be lost on some folks.

Mr. Colin Lachance: We did that because when we talk about rule of law—which is not the world that we live in but the world that people here in this room, as elected members of Parliament, live in—we are obligated under rule of law to honour international commitments made by Canada in a number of different areas.

The United Nations is that global clearinghouse for international obligations from a rule-of-law perspective.

As you know, they recently endorsed this declaration with respect to aboriginal rights, and Canada is way behind the international curve when it comes to that, and Ontario is way behind the curve of other provinces in Canada, not to mention the fact that there are some fairly important biodiversity commitments that we've made too. So we have the aboriginal agenda, and also the environmental agenda, that need to be given specific consideration in order for us to hold our heads high in the UN and be honourable members of that international body.

Mr. Gilles Bisson: Do I have time?

The Chair (Mr. David Oraziotti): I was going to move on to the other members.

Mr. Gilles Bisson: Very quickly—I've been pretty good about questions.

The Chair (Mr. David Oraziotti): Okay.

Mr. Gilles Bisson: You say resource managements were best done when decisions happened on the ground. Do you see this legislation as fixing that problem, or at least getting us there?

Mr. Colin Lachance: We see the opportunity for the legislation to steer us in the right direction, so that over the course of time we can look for innovative ways to make sure that there's a connection between the top-down command and control and the bottom-up.

Mr. Gilles Bisson: I think we agree, but does this legislation do that?

Mr. Colin Lachance: As it is right now, there are a number of gaps in that legislation that need to be revisited, as referenced in the challenge section of the submission that we've made to the committee today.

The Chair (Mr. David Oraziotti): Mr. Brown.

Mr. Michael A. Brown: Chief Corston and Mr. Lachance, it's good to see you. I think it's valuable that you came. I think it's important that First Nations folks and others in local communities have an opportunity to build a model that works in particular areas, and I think that's what you're here talking about.

I know that some of your First Nations are also working—on their own, I suspect, but maybe with you—on a proposal regarding a local management corporation as one of the models. I want to encourage what you're doing to help us—because we're all together in this, as you pointed out—get to where we need to be in northern Ontario and in the province as a whole.

I guess my question is, is this legislation able—I haven't had a chance to look at your recommendations—to be tailored to do that? We are talking about one model, to begin with, used in the northeast and one in the northwest, but that would give the opportunity for us to assess that and for you to assess that. Would it give us the opportunity to see if we can find better results?

I suspect that it won't be the same everywhere, and probably you know that, too: that what works in Chapleau and Wawa and Hornepayne and White River is not going to work, perhaps, in the northwest. I don't know, but I bet that's the case.

Do you want to make some comments on—

The Chair (Mr. David Orazietti): We have time for a very brief response and then—

Mr. Colin Lachance: Do we not have as much time to answer the question as he had to ask it?

Mr. Michael A. Brown: Sure. We agree.

The Chair (Mr. David Orazietti): No, actually you don't.

Mr. Colin Lachance: Really, what we're saying is that—I mean, if we have to spit it out—where is the real spirit and intent of the crown to reconcile? It's not the wording in the statute that's going to make the difference. Are we really willing to meet and sit together and solve these problems before crisis occurs in northern Ontario? The Environmental Commissioner of Ontario is basically predicting it; so are a number of other organizations.

So if the spirit and intent are not there, then the act will fall short. If the spirit and intent are there, then it won't, and in the absence of any proof of the spirit and intent, then it has to be prescribed specifically in the statute, and the statute certainly doesn't do that now.

The Chair (Mr. David Orazietti): Thanks for your presentation. That's the time for today.

Mr. Colin Lachance: Meegwetch.

The Chair (Mr. David Orazietti): This time, the respondents' answers were fairly lengthy, so you'll be up first at the next opportunity.

TEMBEC INC.

The Chair (Mr. David Orazietti): We're going to move to our next presentation, which is a teleconference with Tembec. Let's see if we can get them on the line here in a moment.

Mr. Dennis Rounsville: We are on the line.

The Chair (Mr. David Orazietti): Good afternoon. How are you today?

Mr. Dennis Rounsville: Very good.

The Chair (Mr. David Orazietti): Good. Welcome to the Standing Committee on General Government committee hearings on Bill 151. You've got 15 minutes for your presentation. Any time that you do not use will be divided among committee members to ask questions. If you could just start by stating your name and proceed when you're ready.

Mr. Dennis Rounsville: Very good. My name is Dennis Rounsville. I'm the president of the forest products group with Tembec. With me is Michel Lessard. He's the vice-president of our forest resources management group.

Just for context for the members there, Tembec has six sawmills, two flooring mills, one engineered lumber facility and one newsprint mill in Ontario. So we are a decent-sized operator and, hence, take this legislation to heart.

First of all, thanks to the committee for the opportunity to provide comment. I know there was some concern about where these committees would be held. For me, this works very well. I've got an awfully busy day my-

self, as you do, and the ability for me to save the travel to Toronto or to Timmins or Thunder Bay and do it via conference call works very well for me, so I thank you for that.

To start off, I've been part of a group of industry that's been working with government officials for about the last year, since the tenure reform paper came out. I think we worked fairly well with the government staff in terms of a general understanding of how LFMCs and the enhanced co-ops could unfold. There was a good working dialogue there. But to be frank, when the bill came out, we did have some significant concerns, as we didn't feel that it necessarily reflected our conversations. I'll be fairly short in all this.

Tembec's primary concerns centred around the changes to the Crown Forest Sustainability Act, and that was primarily around subsection 41(1). We thought they went well beyond our understanding that we had with the government officials, and in fact would be a disincentive to investment in Ontario.

However, over the last 10 days or so, we have been in further discussions with MNDMF staff, and we understand that there will hopefully be some changes coming to the bill, so most of my comments will be made within that context.

1600

Starting off with 41.1(2)(c), that is a section, I'm sure you're aware, that gives the Lieutenant Governor the ability to actually cancel licences or agreements per what was yet to be in a still undefined regulation. We had serious concerns with that, because it was kind of a wild card there in terms of what the Lieutenant Governor could do. Our understanding now is that that clause or that proposal will be taken out. We would support that fully.

Clause 41.1(2)(b) dealt with the Lieutenant Governor being able to take away a licence or agreement if, in his or her opinion, the forest resource was not being optimally utilized. That word, "optimally," similarly gave us a lot of concern. You could see a situation where a person would promise to produce one product, and we were already producing another product. Somebody could make the decision that the secondary product would be more optimal, and we could lose our licence. That caused us great concern.

We believe the intent in drafting it was to deal with instances where there was actual hoarding: People weren't using their allotments. We understand that that section will be changed to something like "sufficient and consistent use of the resource" as compared to "optimal use of the resource." "Sufficient and consistent" would then be defined in our licence agreement so we would know what the rules of the game were. If that wording or something like that is put into section 41.1(2)(b), then we would agree with those changes.

Third, initially, if the Lieutenant Governor decided to cancel a licence or agreement under 41.1(2)(b), we had no opportunity to challenge that. We understand again that amendments will be made so that the licence holder would at least have the opportunity to make a representation post-decision. We agree with that.

We would have liked to have seen one additional change there. We would have liked to have seen something introduced into that section that said something like, “and where the licence holder has failed to prove that they can sufficiently and consistently use the resource,” then the Lieutenant Governor could take back the tenure.

We think it's always better to operate in a situation where you have more information to drive a decision. If the Lieutenant Governor was able to read a report that said that we've consulted the licence holder and they have failed to convince the crown that they can utilize the resource, then a decision can be made. But our experience would say that often—sometimes; maybe not often, but sometimes—decisions are made without adequate information, and then we, as a licence holder, spend the next two years trying to undo a decision. We would have encouraged or still do encourage an approach that gets all the information before a decision is made. So we would have liked to have seen that section further modified.

The moving-forward section: There is going to be a change to the Crown Forest Sustainability Act in subsection 69(1) to deal with collection of information to facilitate a move to market-based timber pricing. Again, we understand there will be some changes introduced to Bill 151 that will protect the confidentiality. We think that's important. I think licensees will co-operate in providing information as long as they know their individual company or individual mill is kept confidential.

The final comment that I'll make is again around section 41. Again, we understand that there will be some clarity introduced and changes to that section—the Lieutenant Governor can cancel a licence or agreement to create an LFMC or an enhanced co-op SFL. I guess we agree, when it comes to co-ops, that this is necessary. I believe this can happen in regulation already. By moving into legislation, it is going to have the same intent. For licensees that have banded together and said, “We want to move towards an enhanced co-op”—because we've gone through this. You have to actually give up your licence or have it taken away so you can create the co-op. We would agree with that. That's a necessary change.

The move to allow the Lieutenant Governor to cancel, to create LFMCs: We know the intent of that. We do have some concern that if it was written with no context, then it could provide the way for the whole province to move at the will of the Lieutenant Governor, to have LFMCs everywhere. That was not the intent of the working group that was working on this. We believe the intent was to have two, see how it goes, and if it is a good vehicle, then it could be expanded. To that end, I believe there will be some changes made to section 3 of the bill that will indicate that that move towards additional LFMCs would not be made until there's been a proper evaluation of the two pilots. If that is put into section 3, then I think the powers given to the LG under section 41 will be done within that context, and again, we would agree with that.

Reading through the pages of the bill, there are a lot of other aspects of the bill that deal with the functionality

within government. We'll leave that up to government to include what they need to drive this in government as a government agency. Based on what I've said, then, if those types of changes are in the bill, then we would be supportive of it moving forward and us continuing to work with government staff to put the details in to see how it would work.

Thanks for the opportunity to make these comments. I'll be happy to try to answer questions, should you have some.

The Chair (Mr. David Oraziotti): Thank you very much for your presentation. I think we do have some questions, so we'll move to the Conservative caucus first. Mr. Hillier will be asking questions.

Mr. Randy Hillier: Thank you, Dennis. It's quite interesting listening to your presentation. I think what's clear is that there's really no need for democracy or the Legislative Assembly when the minister can just go around and make amendments to this bill without coming to the committee or informing us of that.

You brought up a really good point about the subjective terminology on these licences. We've seen recently, up in Sioux Lookout—McKenzie Forest Products, when I was talking to them, told me that the criteria for their allocation was very subjective. The ministry would not take into consideration the number of jobs employed in the bush, only the number of jobs in the plant itself, in the mill. Also, because they had already done a good job on the environmental side, they got a poor ranking on environmental improvements—because they've already done a good job. The sense in the community is that no sawmill can win that sort of competition. I'd like to just have your thoughts. You did say that the minister was going to change some of that subjective terminology, but we haven't seen those amendments here yet. Maybe—

Mr. Dennis Rounsville: Yes, and to be very frank, we haven't seen anything either, so I'm just going based on comments. But we are very concerned with the word “optimally.” For somebody in our business, if somebody makes toothpicks they may create a lot more jobs than somebody who makes two-by-fours, so “optimally” is a concerning word when you have \$100 million invested in your plant.

A move to “sufficient and consistent” is a move in the right direction, because it says if you're continuing to use your resource in the manner that you promised when you were awarded the licence or agreement, then this should never come up as an event where they would take your tenure away. To that extent, we still need more clarity, and our understanding is that if that sort of wording ends up being in the act, there would be clarity in our licence agreements so we would know what the words “sufficient and consistent” mean.

Mr. Randy Hillier: Well, we see it happening right today—

The Chair (Mr. David Oraziotti): Thank you for that response. Mr. Bisson of the NDP caucus has a question for you.

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Mr. Gilles Bisson: A question to you, Dennis, and it's the following: Has any thought been given in regards to, will this legislation, if passed as proposed, have any influence in regards to some of the challenges that have come from the US government as far as countervail? Is there a sense that in moving to the competitive system and moving to this particular system, we would be opening ourselves up a little bit more to countervail than we have under the current system?

Mr. Dennis Rounsville: I would think it might be the opposite. I'm referring to market-based pricing of tenure. Our experiences in other provinces, I guess primarily in BC, where they have moved to—

Mr. Gilles Bisson: Let me just ask you this question. The reason I ask is this: For example, we have a roads program, and the roads program, as you know, is established by the province to do what it does. If we move to a competitive bid system, could they make the argument, "Well, you know, that's clearly a subsidy in a competitive system, so therefore the roads subsidies can't function"? Is there a thought of that? Has anybody looked at it?

Mr. Dennis Rounsville: I don't know if the government people looked at it. I don't think they would draw that first conclusion. If we move to a market-based system, we'd have to do that with the acknowledgement of the US coalition if we were still under a softwood lumber agreement, so we can't slip out of that. But I don't see that as a risk. I think the more information we have on timber pricing is better, not worse.

The Chair (Mr. David Oraziotti): Thank you for your response.

Mr. Brown, the Liberal caucus, briefly.

Mr. Michael A. Brown: I'll be very quick, Mr. Chair.

I just want to thank you for working along with the ministry as we try to get to landing on the best possible bill to put forward, but I especially want to thank you, as the member who represents Chapleau, for the fine employment opportunities you continue to provide in that community.

Mr. Dennis Rounsville: Thank you. It's where we're at. We like operating down in that neck of the woods. It has a good forest and a good three and a half seasons of operation, so it's a nice area to work in.

The Chair (Mr. David Oraziotti): Thank you very much for being with us today, and that's the time for your presentation.

Mr. Dennis Rounsville: Again, thanks for the opportunity.

FEDERATION OF NORTHERN ONTARIO MUNICIPALITIES

The Chair (Mr. David Oraziotti): Our next presentation is from the Federation of Northern Ontario Municipalities. Mr. Mayor, good afternoon and welcome to the Standing Committee on General Government. As

you're aware, you've got 15 minutes, so you can start by stating your name and start when you're ready.

Mr. Alan Spacek: Thank you again and good afternoon. My name is Alan Spacek. I'm the mayor of Kapuskasing, but I'm here today as president of the Federation of Northern Ontario Municipalities, or what is known as FONOM for short.

I'm pleased to be here today to raise the concerns that our association and our member municipalities have with regard to Bill 151, the Ontario Forest Tenure Modernization Act. But before I address our response to the bill under discussion today, I'd like to take a moment to acquaint you with FONOM and its mandate.

FONOM was established in 1963 with a mandate to work together for the betterment of municipal government in northern Ontario and to strive for improved legislation respecting local government in the north. We represent 110 municipalities located in the seven districts of Algoma, Cochrane, Manitoulin, Nipissing, Parry Sound, Sudbury and Timiskaming.

As my time here today is limited, let me say to you that our objections to the passing of this legislation at this time, in its current form, are of two streams, one being the intent and content of this bill and the other being the process around which the bill is being considered.

With regard to the intent and content, we are concerned that this bill will result in arbitrary increases in government authority. The amendments to the Crown Forest Sustainability Act proposed through Bill 151 appear to provide government with the authority and arbitrary discretion to cancel existing wood supply agreements and/or licences for any reason. We are also concerned that there is no recourse for affected parties, as this bill removes existing rights of notice and appeal and any current options around legal recourse if wood is unfairly taken away.

We believe that Bill 151, if implemented, would deter investment and employment because of the uncertainty the bill itself creates. We feel that the bill as presented will significantly devalue existing forest product facilities that rely on crown timber and will discourage capital investment and employment. In short, we believe that this bill creates a great deal of uncertainty.

If you agree with nothing else that is said here today, I'm sure you can agree that this is an already devastated industry and the communities that rely so heavily on it cannot bear another three years or more of uncertainty and reduced investor confidence. We need to have northern Ontario seen in a positive light by industry leaders, investors, shareholders, customers, employees and citizens as a secure, stable and predictable jurisdiction in which to invest scarce capital in their futures.

We are further concerned that this bill proposes a one-size-fits-all approach with regard to local forest management corporations, with little flexibility. Our concern is that this approach rarely works in the north because of our wildly divergent circumstances to make any business enterprise work here. Further, it assumes an untested business governance model that could be disastrous to us in the north.

Another concern that has been raised in the short debate on this bill is that it will permanently open Ontario's forests to international competition under its North American free trade agreement and the World Trade Organization commitments. If this is the case, will the forest industry jobs follow, and will the existing ones remain?

When the minister introduced this bill just over 50 days ago, he spoke about the Ontario Forest Industries Association's support for his ministry's proposed approach to tenure and pricing reform. However, that conditional support from the OFIA was withdrawn in a letter to the minister on March 11, 2011. In that letter, the OFIA states that presently, Bill 151, as drafted, creates more uncertainty for a sector that is just beginning to recover. Since the OFIA has committed to work with the minister to ensure that these concerns are reflected in amendments to Bill 151, they ask that this be done now and that the fast-track process for this bill be slowed down—although I'm aware that more discussion has taken place very recently to address some of these concerns.

This leads me to the second part of my presentation, which is about the debate and the process on this bill, in particular with the lack of consultation in northern Ontario. A number of our members have commented that it seems that this legislation is being rammed through. We think the case has been made for more consultation on this bill and perhaps, more precisely, more meaningful consultation, which would mean holding committee hearings such as this in northern Ontario.

I know the clerk of the committee has received a number of requests for hearings to be held in the north-eastern and northwestern parts of Ontario. We would certainly request that, as it's such an important bill in the effect it would have on our communities. We believe the government has an obligation to hear from northerners in the north. After the input received from the first round of consultations, communities such as Timmins, Espanola, Thunder Bay, Hearst, Cochrane, Wawa and many more have made it clear that they expect the government to consult on legislation that will severely impact their communities and are anxious to be heard on this particular bill.

I'm asking that this committee on general government travel to the north to see first-hand how the forest industry has suffered over the past few years and to give our northern communities the opportunity to be heard on this vital issue.

Just one week after this bill was given first reading, the minister responsible for it unveiled the growth plan for northern Ontario. One of the core principles behind the development of this plan was a more collaborative approach in finding solutions for issues facing northern Ontario. We are therefore disappointed that this approach was not being utilized as it relates to this bill and its far-reaching effects on the forest industry and, therefore, northern Ontario.

I conclude my remarks today by respectfully calling on the government, through this committee, to allow for a

more thorough and careful review and consultation of this proposed legislation through a schedule of hearings in northern Ontario.

Thank you very much for this opportunity. I'm happy to answer any questions.

The Chair (Mr. David Orazietti): Thank you very much for your presentation. We've got some time for questions. Mr. Clark, go ahead.

Mr. Steve Clark: Your Worship, we're very pleased that you could come and express FONOM's feelings on the bill. It seems, just with our last presenter, that the uncertainty is even more so. The fact that your association, which represents a significant part of the area that's going to be affected, hasn't had the same discussion with the minister as our previous presenter, who knows all the amendments—I'm a little shocked that if the government was going to talk about their amendments, they wouldn't at least have shared them with FONOM.

Certainly, people on this side of the table have been very supportive of having hearings, and I know that the parliamentary assistant, when questioned by me about—I was trying to understand him correctly. This is his quote: "We need to move on. Northerners have had ample opportunity to comment on this." That was from the parliamentary assistant.

We appreciate your comments and the fact that you're asking for northern hearings. I'm glad that you presented that, sir, because I think the two parties here agree with that 100%.

Mr. Alan Spacek: I drew out of those comments that you're asking me to comment on the position that enough consultation has gone on. I think it's significant to note that there has been extensive consultation going on in the north. Our view is, though, that it was with respect to gathering information in preparation for the legislation. Now that there's a draft of the legislation out, we think it's equally important that another opportunity be given to speak to what the concerns were that you heard here today.

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I know I did start off with some of the technical aspects of what we see as challenges in the legislation, but we're really focused on the process, as FONOM and as municipalities.

The Chair (Mr. David Orazietti): Thank you. Mr. Bisson.

Mr. Gilles Bisson: Putting it simply, does this bill reflect what people said at the consultations? Hearst, Timmins and other communities had the consultations happen in their areas. Does what was said actually get reflected in this bill, in your view?

Mr. Alan Spacek: I can't speak specifically to the content of those consultations, but members of FONOM are telling us that they need a second opportunity to properly present what they feel are the shortcomings of the legislation.

Mr. Gilles Bisson: What I've been hearing is that—and I know as part of the process—a lot of what people talked about, what they wanted in this bill, didn't end up

in the bill. That's the argument for why you need to go back out and present again.

The Chair (Mr. David Orazietti): Thank you. Mr. Brown.

Mr. Michael A. Brown: Thank you, Your Worship. Good to see you.

I attended some of these consultations also, including the one in Timmins. As someone who represents north-eastern Ontario, pretty much, would you—I'm trying to think of how to phrase this right. Given what Mr. Rounsville, who represents Tembec and has a mill in your municipality, just said, would you think that the government has been listening to the views of northerners and the views of municipal folks? That's the way this process works. That's why it has been out there for quite some time in its form and why it gets changed when it gets here. We listen to people and we do what we do. I suspect that if we didn't do that, then there wouldn't be much use having public hearings, period.

I understand that we have made, I think, 166 consultations in 166 communities across northern Ontario, which includes many of my communities, if I can say that: Espanola, Wawa, Hornepayne, Chapleau; you name it and they've pretty much been there. We are now working towards that finished product, and there will be, following this—as people know, this is a fairly broad bill which permits regulations that will again give the opportunity for people to tailor those to particular circumstance. Given the commitment to a model for five years before we decide whether this is the model we want to follow, would you not think that maybe at some point you've got to make at least some of these decisions?

Mr. Alan Spacek: Based on your comment about Mr. Rounsville's comments, obviously we're not aware of those. I guess if there had been more opportunity to be aware of those, then we would have a different opinion, but certainly the consistent feedback we had is that there wasn't that opportunity. That's welcome news that there is that ongoing consultation going on with industry.

I think, though, it really just speaks to, again, what our primary concern is, which is the process. The process should allow for that kind of consultation that went on, obviously, with some of the major industry players to occur throughout the north.

The Chair (Mr. David Orazietti): Thank you, Mr. Spacek. That's the time for your presentation. We appreciate you coming in today.

TOWN OF ESPANOLA

The Chair (Mr. David Orazietti): Okay, folks, our next presentation is the town of Espanola. Mayor Lehoux is on the line, I believe. Good afternoon. Welcome to the Standing Committee on General Government. This is an all-party committee holding hearings on Bill 151. You have 15 minutes for your presentation. Any time that you do not use will be divided among members for questions. You just have to state your name and you can start your presentation.

Mr. Joel MacKenzie: My name is Joel MacKenzie and I'm the CAO for the town of Espanola. I have in my presence here Mike Lehoux, who is the mayor for the town of Espanola.

The Chair (Mr. David Orazietti): Good afternoon. You can go ahead.

Mr. Joel MacKenzie: We want to thank the committee, obviously, for the opportunity to address Bill 151, and more importantly for allowing Domtar to make a presentation, which I believe they are doing on April 13. They obviously can address the mechanics of the legislation in more detail than we can. We probably won't need our full 10 minutes, as our late notice precludes us from a lengthy presentation. That may be good.

However, we are concerned about the short time frame to formalize the concerns of all the affected parties. The fact that the hearings were not held in northern Ontario, I think, speaks volumes as to what our voice really means to this legislation.

To begin with, the bill is very reminiscent of past municipal legislation that was developed in the mid- to late 1990s. These were general in nature but consisted of all-encompassing, sweeping legislation—omnibus bills, so to speak—adopted by statute, with the resulting legislation being forced on municipalities without much input.

I remember Alvin Curling, with a filibuster of about 18 hours in 1995; I remember watching that on TV. Believe it or not, it was entertaining.

It was our understanding, however, from the limited information we've been given, that much of the power to implement Bill 151 will be governed through regulations yet to be developed, and the current bill is saying, in effect, "Just trust us." As many of the current council and the staff here know, we trusted the government of the day, and much of our revenues and support evaporated through grant reductions, changes in the property tax system and the downloading of provincial services.

This is not to say the current government has not tried to mitigate the massive damage done by the past government, but as you and many MPPs know, once regulations are in place, they're very, very hard to eliminate or modify.

The impact on the town of Espanola, of course, is our biggest concern. If Domtar, which is our major employer, was to find that the cost of doing business in Espanola is too high because of wood supply costs, we would effectively have to reduce services amounting to approximately \$1.3 million. To put this in perspective, it's the equivalent of closing our whole recreation department. Of course, it would also have a devastating effect on our businesses and the educational and residential communities, with our population being reduced by large losses in employment.

It almost goes without saying that in a one-industry town, which Espanola is, the loss of a major employer is devastating.

One last thought: For a government that is preaching openness and transparency, too much in Bill 151 seems

to be formulated with the future orders in council or cabinet regs, and the resulting power being given to a single minister to make binding decisions. It is interesting to consider that municipalities, thanks to recent provincial legislation in this area, have had to bear the brunt of many challenges, through the Ombudsman etc., for the apparent lack of transparency in making their decisions.

It might show leadership if the government followed some of its own guidelines before enacting this sweeping type of legislation, and allowed for consideration of the proposed regulations before the legislation is passed. If a municipality had the delegated powers from the province to adopt this type of legislation, all potential regulations would have to form part of our discussions.

Again, this may sound harsh—we know that—but we feel that we have to defend our industry in the town of Espanola.

We'd like to thank you for your kind attention to our concerns here.

The Chair (Mr. David Orazietti): Thank you very much for your presentation. We do have some questions.

Mr. Joel MacKenzie: Sure.

The Chair (Mr. David Orazietti): Steve Clark, who is part of the Conservative caucus, will ask you the first question.

Mr. Steve Clark: Thanks, Joel and Your Worship, for your presentation. We've certainly heard similar concerns from the mayor of Kapuskasing about no hearings in the north. I know, from this side of the table, that the Progressive Conservatives and the New Democrats are very forceful in terms of wanting to have northern hearings.

We heard from a deputant earlier today that they had had some discussions with the minister about proposed amendments. Has anyone in your municipality been contacted by the Liberal caucus, indicating that they've got some amendments coming forward in the next couple of days?

Mr. Joel MacKenzie: Not to my knowledge. Again, it just hasn't got to my desk.

Mr. Steve Clark: Certainly, if you tried to take away powers from businesses or from some of your ratepayers without an opportunity for appeal, I expect that you'd have a pretty large delegation at your council chambers, would you not?

Mr. Joel MacKenzie: We would.

Mr. Steve Clark: I guess we've had different people today express to us a willingness to sit down and work out some of these details. Would your municipality be in favour of hosting a consultation meeting in the next month?

Mr. Mike Lehoux: Sure.

Mr. Joel MacKenzie: Yes, we would. I guess the biggest concern is the regulations. Even talking to the local industry here, with the few minutes we had before this meeting, if they at least had access, or the regulations were fleshed out somewhat and they could see what the impacts were, it would make a difference.

The Chair (Mr. David Orazietti): Thank you. Mr. Bisson, go ahead.

Mr. Gilles Bisson: Thank you very much for presenting, Mike and Joel. Just two quick questions. Would you agree that these are fairly significant changes to both the pricing system and the forest tenure system that we have in Ontario?

Mr. Joel MacKenzie: From my knowledge and the briefing we had, yes.

Mr. Gilles Bisson: And if it is as significant as I believe it is, and I think most people would agree, do you think that this process is rushed and we should put the brakes on a little bit here?

Mr. Joel MacKenzie: Yes, that's what we're saying. It is rushed.

Mr. Gilles Bisson: Thank you very much.

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The Chair (Mr. David Orazietti): We'll move to the government caucus. Mr. Brown has a question.

Mr. Joel MacKenzie: Hi, Mike.

Mr. Michael A. Brown: Hi, Mr. MacKenzie and Your Worship Mr. Lehoux. I haven't seen the mayor since Friday morning at breakfast.

This is an important bill. I believe Domtar is the single largest employer in the entire constituency, and it is an important player. A week ago Friday, I was in to see the manager, Tim Houle, and Brian Nicks from Econ.

In discussing this, we need to recognize that we, as a government, had representations and consultations in Espanola during the 166 communities that we have already been to. I realize that it's a little bit quick, I suppose, for some. For others, it's not soon enough, and that's the position the government is facing. There's nine million to 10 million cubic metres that haven't been allocated—well, they're now being allocated, but they've been sitting idle. Many of my constituents have been employed at many of the sawmills in the communities I represent, and it seems that it's time to move on.

Given the comments—maybe you didn't hear from Tembec and some other industry officials—it's time to get going. We need to put people back to work, particularly in the Espanola area. There are some other wood supply opportunities that are coming out in the area. I'm just saying that I appreciate the input both from you and the mayor, and from Domtar in Espanola a week ago.

Do you have further comments about the importance of Domtar to the community and the employment of people, both direct and indirect?

Mr. Joel MacKenzie: Well, I think it goes without saying, Mike. You know the importance of Domtar to Espanola.

Mr. Mike Lehoux: Basically, if Domtar were to shut down, we would be a very poor municipality.

Mr. Joel MacKenzie: I think Mike knows what we would be.

Mr. Michael A. Brown: Yes.

Mr. Joel MacKenzie: The only other thing is that we don't have the detail. I did have a briefing with Tim Houle with respect to some of the details in Bill 151, and you did touch on idle land. I think his concern was that

some of the idle land or property being considered, though, is not usable. I think that was one of their concerns, but I think that's best discussed with their people.

We do thank you for having Domtar at least being able to make representation on April 13 because, as I said, they can flesh out a lot of the details and expand better than we can here. Our main concern is the legislation and how it's being done, and of course the impact on the town of Espanola—what we would do, worst case scenario, if we lost Domtar here.

The Chair (Mr. David Oraziotti): Thank you very much, gentlemen. We appreciate your time today. That's the time for your presentation. Have a good afternoon.

Mr. Michael A. Brown: Chair, I just would like to correct my record. I said 166 consultations; it was 116.

The Chair (Mr. David Oraziotti): Okay. Thank you very much for that.

ST. MARYS PAPER CORP.

The Chair (Mr. David Oraziotti): We have on the line our next presenter, Gord Acton, president of St. Marys Paper Corp.

Mr. Acton, good afternoon. You're presenting to the Standing Committee on General Government on Bill 151. It's an all-party committee, and you have 15 minutes for your presentation. Any time that you do not use will be divided among members of the parties here to ask questions. Could you just state your name and start when you're ready.

Mr. Gord Acton: Thank you very much. My name is Gord Acton. I'm president of St. Marys Paper Corp. and St. Marys Renewable Energy Corp.

St. Marys Paper Corp. is a private company owned by a strategically assembled group of entrepreneurial businesses. We purchased the St. Marys paper mill, which is a groundwood and supercalendered specialty paper mill, in June 2007. This business produces quality paper grades used mainly by magazine publishers and retailing companies for high-quality advertising inserts, flyers and catalogues.

Our business plan was to transform this paper business from a company that converts fibre into a single product, paper, to a company that makes high-value products from fibre, products that the changing consumer is going to want. We intend to produce products that are essential to tomorrow's economy, green products such as green energy in the form of steam, electricity, biofuels; chemicals which are derived from the lignin, which is a part of wood fibre, and from that lignin chemicals are cracked in bio refineries which are used in the plastics, pharmaceutical and other industries; and products that are created by nano-crystalline technology.

The primary step, which we indicated in our business plan conceived in 2007, was first to build a state-of-the-art co-generation plant to produce green energy in the form of two types of energy, steam and electricity, which are essential to convert fibre into usable products. To that end, St. Marys, through St. Marys Renewable Energy,

has signed a long-term power agreement with the OPA to produce biomass-fuelled renewable electrical energy and steam using waste wood. We're currently negotiating the financing and building of the plant, with construction slated to start this year, to be producing electricity by 2013. This co-gen project is essential for our company to achieve its goal of transitioning to the new fibre conversion business of the emerging bioeconomy.

St. Marys has a large regional impact, and the analysis of the Ministry of Northern Development, Mines and Forestry has indicated that the business activities of St. Marys directly and indirectly employ 2,000 people in the Algoma region. That will increase during the two-year construction phase of the co-generation plant and as the operations of the plant, including fibre procurement, commence.

We have extensive partnerships on two successful shareholder-controlled sustainable forest licences and we have crown fibre supply commitments on three other sustainable forest licences.

St. Marys has been sustainably harvesting the same forests for over 100 years, which I think is a real testament to the sustainability and the practices of sustainability that St. Marys employs. Sixty percent of the roundwood and biomass fibre supply utilized by St. Marys is procured from lands on which the business has crown fibre supply commitments, while 40% is from Ontario private lands, Michigan state and private lands and Ontario crown lands where the company does not have a commitment. Sixty percent to 70% of the fibre used by St. Marys is FSC certified. Now, FSC certification is a process where managed forests are evaluated against established environmental principles and performance standards. The Forest Stewardship Council forest certification standard is recognized and endorsed by most in the environmental and paper purchasing communities as the most stringent forest certification standard.

Most of our uncommitted wood procurement activities are conducted in an open-market, competitive environment by a wholly owned subsidiary of St. Marys, and it's called St. Marys-SMP Resources. It operates as a stump-to-dump harvest contractor on the Algoma sustainable forest licence, on Ontario private land and on Michigan state private land. This harvest business produces 300,000 tonnes of forest products annually, which are sold to 20 forest product processing facilities in Ontario, Quebec, Michigan and Wisconsin.

As you can see, as a business located on the border of the United States and Canada, we operate a very dynamic forest business. We swap, we trade, we buy and we sell forest products that go into Michigan, Wisconsin, Quebec and Ontario, and they go both ways. We also use forest products to produce paper, 98% of which is exported.

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SMP Resources, the wholly owned subsidiary, and St. Marys Paper Corp. have a range of wood sale, purchase and harvest contracts, which include the following. We have single wood purchase contracts. We have harvest

agreements, which include stumpage agreements, single price process, product price process, landowner sell product process. As well, we have state of Michigan timber sale process, and a must sell commitment process.

St. Marys isn't just a consumer of forest products from the forest. We're also in the tourism business through controlled subsidiaries, which are Ontario Wilderness Vacations and Air-Dale Flying Services. These businesses bring hundreds of fly-in tourists to enjoy the natural beauty and wilderness of the Algoma district. Therefore, when we approach Bill 151, we don't just come to it from a forest processor—we come to it, as well, as a business involved in the tourism business.

We have many active relationships with the communities we live in and the communities that we deal with. We've got strong business and community relationships with area aboriginal communities, the city of Sault Ste. Marie and the smaller towns in the region. We're involved in many varieties of successful initiatives with the local aboriginal communities, including aboriginal land infrastructure development, creation of aboriginal-operated businesses, business partnerships, skills training and community event financial support.

Our company is directly involved with the Sault Ste. Marie Economic Development Corp., the Sault Ste. Marie Innovation Centre, the city alternative energy committee, as well as the city transportation committee to assist the city in its plan to grow into the bioeconomy business.

We believe that the Bill 151 tenure system changes planned will complement the business development efforts of local aboriginal communities and the city of Sault Ste. Marie, which we are involved with. Therefore, we approach this bill from many important perspectives, not from a single perspective of just a forest harvester. We're not just a paper business in transformation, but we're also a buyer and trader of roundwood. We purchase mill residues from other mills. We use the wilderness in co-operation with forest harvesting activities. We are a producer of green energy: We burn wood waste in our boilers today to produce steam. And we will, in the future, produce new-age products, including green energy, and we'll do that in a cost-effective manner on a sustainable basis, as we've done in the past, and in a responsible manner from FSC-certified forests.

Just as importantly, we're speaking to you as a group of Ontario residents, Ontario businesses. The forests that we harvest and use for these many uses are here to support our children and, hopefully, our grandchildren. We're investing our money in Ontario to build a sustainable business that can employ people into the future and be part of the modern conversion of fibre into businesses that use this immense forest that Ontario has.

So we come to the table from this perspective, and when we look at Bill 151, our analysis brings us to a position to support the Minister of Northern Development, Mines and Forestry in his initiative to modernize Ontario's forest tenure business by implementing this bill.

In broad terms, how do we analyze this bill? How will Bill 151 help us in our business? Well, it will help lower the wood cost and provide long-term fibre supply opportunities for businesses wishing to convert fibre into jobs by, first, facilitating an increase in the volume and the number of participants in the harvest activity, which spreads the overhead cost of managing, accessing and harvesting the forests and reduces the costs on a per-unit basis.

Secondly, it's going to create opportunities to harvest more fibre from crown lands, which can be sold or traded into forest product and used by the new bioeconomy mills.

Thirdly, it's going to increase access to the forest resources, and the increased access that the bill will provide will enhance the bioeconomy future for the region and create market opportunities. It will enable the start-up of new forest product processing facilities, which will create markets for fibre and by-product sales and purchases. It's going to establish mechanisms to discourage timber hoarding. It will help establish more local markets, and it will allow for sustainable crown forests through the harvest of all products to supply enhanced markets.

We believe that the design and implementation of a new tenure system over the next five to seven years will provide a system that's more flexible and responsive to the needs of the bioeconomy. It will support St. Marys and others, and those others, including ourselves, who look to change their business model to one which will embrace the new age and embrace new industries, which will include top performers.

Bill 151 is based on sound economic principles which appropriately consider local circumstances and will continue to provide for the sustainability of crown forests in Ontario.

The Chair (Mr. David Oraziotti): Thank you very much for your presentation, Mr. Acton. We've got the first question: Mr. Hillier of the Conservative caucus has a question for you. We just have a couple of minutes, a brief time, here for questions. Then we need to move on.

Mr. Randy Hillier: I'll be as brief as possible. Thank you, Gord.

I understand you're pleased with Bill 151, even though you don't know what the regulations are going to be. Contrary to what others have told this committee, you are left without any legal remedy. If this bill was passed today, your three sustainable forestry licences could be revoked or eliminated at the minister's discretion, without any legal remedy or recourse, and your business could be left with no fibre.

We've heard from the minister that he's been making commitments on changes and amendments to this bill to other people outside of this committee. I'm wondering if the minister has made any of those commitments for changes, or commitments of assurance for your wood allocations, outside of this committee as well.

Mr. Gord Acton: First, on your first point, we see it as wholly illogical that any government of any stripe

would simply remove our ability to access the forest and support the jobs which are ongoing on a day-to-day basis. That would be wholly illogical. We are believers in the democratic process to the degree that we think logic would dictate that the types of regulations which ultimately are implemented on any legislation will enhance and accomplish the ends and the policies which are set out in the legislation. So we don't see that as a problem.

Secondly, in the integrated forest which we have described and in which we are a participant, there has to be active dialogue on an almost daily basis with government, and with governments on many different levels. That will continue through the regulatory phase; that will continue through the allocations phase. So we think healthy dialogue with government—dialogue in government—where we provide them with intimate but business information, including our financial information, so they really understand our business, is the best remedy to have good decision-making by governments. So we are not afraid about the future.

The Chair (Mr. David Oraziotti): Thank you, Mr. Acton, for your presentation. That's time. We do not have any more time for questions, but we appreciate you presenting today for committee. Thank you.

Mr. Gord Acton: Thank you.

The Chair (Mr. David Oraziotti): Good afternoon.

Mr. Randy Hillier: On a point of order, Mr. Chair: I'd like to just—I think that was it?

The Chair (Mr. David Oraziotti): We have one more presentation.

Mr. Randy Hillier: Oh, we have one more presentation. Okay.

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TOWNSHIP OF JAMES

The Chair (Mr. David Oraziotti): We have a last presentation today, the township of James. Mr. Barton and Mr. Fiset, are you online?

Mr. Jeff Barton: It's Jeff Barton speaking. It's just myself; Mr. Fiset wasn't available to make it to the call on such short notice. I apologize.

The Chair (Mr. David Oraziotti): No problem. Good afternoon and welcome to hearings on Bill 151 with the Standing Committee on General Government. You have 15 minutes for your presentation. Any time that you do not use will be divided among the committee members for questions. You can start by stating your name and proceed when you're ready.

Mr. Jeff Barton: Very good. Thank you. My name is Jeff Barton. I'm a professional forester and I work closely with the township of James on a number of initiatives related to community economic development. The issue of forest tenure certainly lands on my desk more often than not.

The first thing I'd like to say, and I suspect you've heard this a number of times from northern representatives, is that I can't state strongly enough our disappointment in the government's decision to hold these hearings

only in Toronto. For the past couple of years, I commend the government on their efforts to be inclusive in this process and hold consultation efforts throughout northern Ontario, but it's very disappointing to be shut out in this last stage only by virtue of geography. I think it's poor judgment on the government's part.

For those of you who may not know, the township of James is a small forestry-dependent community in north-eastern Ontario. We're about 200 kilometres north of North Bay. Roughly 90% of the land within the township boundary is publicly owned forest land, so the outcome of this process is of great importance to us as well as to many of the other communities in northern Ontario.

As I mentioned, over the past couple of years, we've committed significant time, effort and our own financial resources to participating in this tenure reform process through travelling to functions in North Bay and Timmins, as well as hosting our own small workshop here back in 2008, really before the onset of this process, trying to do some crystal-ball work ahead of the process to position ourselves as well as we could.

Prior to the implementation and the advent of the SFL system, the township worked quite diligently to develop and implement a model for community-based forest tenure. We were actually one of four selected in the province as pilot community forest projects from 1992 to 1995. Our efforts at that time were to work towards a community-based tenure model. Although we were unsuccessful in this effort, we were subsequently fortunate in that the SFL was issued to an industry co-operative that has had a positive relationship with many of the communities in the area. We feel that they've developed a number of innovative approaches to issue resolution that have served the area well.

The utilization of crown timber in the area has been consistently high and the compliance in their forest operations has been exceptional. This has been recognized through the independent forest audits on a number of occasions.

Our point being that we strongly encourage the government not to dismantle existing, well-functioning SFLs like this one. We are confident, however, that these entities can certainly be improved through the inclusion of community representation. To that end, we've been encouraged and we support the notion of enhanced shareholder SFL and we look forward to the opportunity for communities to be represented through a modified framework.

On other occasions we've expressed, in previous correspondence to northern development and mines staff, that the notions of local forest management corporations may be workable, but we would add a loud note of caution to this initiative, given that the effectiveness of the corporation will be largely dependent on the configuration, professionalism and experience of the board of directors.

Earlier in the reform process, the ministry indicated that it would consider two pilot LFMCs before implementing them on a large scale. This seemed to be a reasonable approach, and we strongly recommend that

the committee endorse a measured approach, and that it's identified in the act.

We continue to be concerned with the overlap between the wood supply competitive process and the tenure reform process. The wood supply process has been well-intentioned; however, as a result of two significant initiatives being carried out simultaneously, adequate human resources really have not been available to finish those. As a result, the wood supply process, which was originally described as taking six to nine months, has now taken nearly two years—over two years, in fact. We encourage the government to expedite the wood supply process and devote the appropriate resources to the tenure reform process.

Due to the delay in the wood supply process, the area has not been able to take advantage of a number of opportunities for new businesses to be established, particularly those related to value-added wood products: bio-energy, pellets etc. Further, existing businesses have not been able to expand, knowing that the wood fibre was available.

Lastly, I would like to reiterate my hope that the government will complete its wood supply process in a timely manner or be cautious in its implementation of the LFCs and will provide an opportunity for communities to participate in an enhanced SFL framework.

Thank you for the opportunity.

The Chair (Mr. David Orazietti): Thank you very much for your presentation. We have some time for questions. Mr. Bisson, you're up first.

Mr. Gilles Bisson: Let me just get to the point. You made a point in your presentation, which I thought was well made, which was that somehow or other people tend to mix up the wood supply process with tenure reform, and they're not the same issue whatsoever. I think that needs to be said more loudly.

The other thing I heard in previous presentations, and that Mr. Brown repeated, is that we've just got to get on with it, man. This bill is going to fix all our wood supply issues. Everybody's going to get access to wood. I just want to say—and it's not so much in the form of a question but a statement—the current act allows us to do that. The problem is that the government and the minister have refused to use the powers under the current act, and to make an argument that somehow or other we have to change the act in order to give the government the ability to do what it should have done in the first place I find passing strange.

At the end of the day, this process is a fairly complex one because we're talking about changing both how we price timber and how we deal with licences. I guess my question to you is, do you feel that the government is trying to rush this process? And do you suggest that we take a little bit more time, slow this down, and, if we're going to do this, we at least take the time to consult adequately with people who use the forest in northern Ontario and that we do it right in the first place rather than trying to throw the baby out with the bathwater?

Mr. Jeff Barton: I guess my sense of that, Mr. Bisson, is sort of how I addressed my homework back

when I still had hair on my head and had homework. I'd tackle the easy stuff first and then go to the difficult stuff. I'm not saying that to minimize the challenge of the wood supply process, but it's fairly straightforward, it's almost linear, and it's a mathematical process in a lot of ways. You should be able to finish that. You can write off the business plans that make sense and the ones that don't and the things—you can split 10,000 cubic metres into two piles or three piles. It's fairly straightforward.

The tenure thing is a more complex combination of social challenges, financial challenges, business challenges, cultural challenges. It's a much tougher thing.

I guess my answer to your question is, get the easier one done first and then do the tough one. Yes, at the end of the day maybe it's going to take another six months or 12 months or maybe longer to get the tenure thing done, but it's doable. To do them both at the same time just makes both of them more difficult.

Mr. Gilles Bisson: Thank you.

The Chair (Mr. David Orazietti): Mr. Brown has a question for you.

Mr. Michael A. Brown: Thank you for joining us this afternoon.

I guess most of us are familiar with the good result of the SFL in your area—the co-operative SFL. Could you kind of expand for me on the opportunities that go with an enhanced shareholder SFL and what you think that might do to the area?

Mr. Jeff Barton: Where we see it unfolding, or we're hoping that we can move that way, is to have some community representation sit on the board of directors. I can't speak for everybody, but how big a voting share we get is still a question for another day, I think. But we would like to be at the table because some of the decisions that get made around wood supply or allocations or species or new players fall onto that table, so to have a voice from the community would be valuable.

The case in point, I think, comes back to something like that caribou—whatever you want to call it—along the northern corridor. The forest industry sat there without community involvement and made commitments for land that they had no right giving. We feel strongly that if the communities were at the table, those types of decisions might come out a little bit differently.

Mr. Michael A. Brown: Thank you.

The Chair (Mr. David Orazietti): Thank you very much for your presentation today. We appreciate you being with us. Have a good afternoon.

Mr. Jeff Barton: Thank you, gentlemen.

The Chair (Mr. David Orazietti): Okay, folks. I think that's it for our hearings. I just want to thank the broadcast folks for setting up the teleconferences this afternoon in the later part of the agenda.

Mr. Randy Hillier: On a point of order, Mr. Chair: I've received a couple of hundred letters that I'd like to share with the committee. I'd like to leave copies with the clerk. We've heard quite a bit from delegations today, and I'm just going to read a little bit of this letter:

"I'm writing to express my grave concern"—

The Chair (Mr. David Oraziotti): Mr. Hillier, if you want to leave the letters, you can. You certainly are welcome to file those with the clerk. We'll take the letters.

That's it for committee today for hearings. Thank you for your time.

Mr. Randy Hillier: It is important that the committee does hear. There are over 200 letters from one community—

Interjection.

The Chair (Mr. David Oraziotti): Absolutely. We'll distribute those, and if you can file those with the clerk, we'll be happy to make sure all members of the committee have a copy. Thank you.

The committee is adjourned.

The committee adjourned at 1701.

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Second Session, 39th Parliament

**Assemblée législative
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Mercredi 13 avril 2011

**Standing Committee on
General Government**

**Ontario Forest Tenure
Modernization Act, 2011**

**Comité permanent des
affaires gouvernementales**

**Loi de 2011 sur la modernisation
du régime de tenure forestière
en Ontario**

Chair: David Oraziotti
Clerk: William Short

Président : David Oraziotti
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENT

Wednesday 13 April 2011

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Mercredi 13 avril 2011

*The committee met at 1522 in room 151.*ONTARIO FOREST TENURE
MODERNIZATION ACT, 2011LOI DE 2011 SUR LA MODERNISATION
DU RÉGIME DE TENURE FORESTIÈRE
EN ONTARIO

Consideration of Bill 151, An Act to enact the Ontario Forest Tenure Modernization Act, 2011 and to amend the Crown Forest Sustainability Act, 1994 / Projet de loi 151, Loi édictant la Loi de 2011 sur la modernisation du régime de tenure forestière en Ontario et modifiant la Loi de 1994 sur la durabilité des forêts de la Couronne.

The Chair (Mr. David Oraziotti): Good afternoon, folks, and welcome to the Standing Committee on General Government. We're continuing today with public hearings on Bill 151. Mr. Hillier, go ahead.

Mr. Randy Hillier: Chair, as you know, my colleague here from Leeds–Grenville tabled a motion with this committee on Monday, pursuant to standing order 126(b), that this committee investigate the impacts of higher energy rates as they pertain to mill closures in northern Ontario. My colleague gave 48 hours' notice to this committee. I understand that this committee is full of individuals who would like to have their issues heard regarding the legislation. My colleague and I told you that there were too many people to hear from in just two days of hearings. However, the member for Algoma–Manitoulin decided there was no need to hear from northern Ontario.

It's imperative to this committee—

Mr. Michael A. Brown: Chair—

Mr. Randy Hillier: I want the Chair to confirm to my colleague and myself, and the individuals in this room who have been affected by the soaring energy costs, that on Monday, before clause-by-clause amendments, this committee will meet and discuss an investigation on the impacts of higher energy rates on mill closures in northern Ontario.

The Chair (Mr. David Oraziotti): Okay. Before we get into a debate on something that we're not going to be debating right now—the member is within his rights to introduce a motion—126—for this committee. However, the practice is, and the ruling is going to be, that once the committee has dismissed the regular business that the subcommittee has already agreed to deal with, including

the depositions and clause-by-clause, at the first available opportunity we will deal with the member's motion. That's the practice for committee, and that is what the standing orders say. Once the regular business of the committee that has already been agreed to by the subcommittee, by members of this committee, which is already set, is dealt with and addressed, then at the first available opportunity, we will deal with the member's motion.

Mr. Randy Hillier: Chair, we've made accommodations today to start the hearings earlier, because we're not going up north. What I just requested was that, before clause-by-clause starts on Monday, we enter this debate on the high, skyrocketing energy costs that are affecting more than Ontario mills.

The Chair (Mr. David Oraziotti): I appreciate your comment. You've made the point. The motion will be debated following the regular business that has already been agreed to by the subcommittee.

Mr. Bisson, you have a quick point on this? Otherwise, we're going to—

Mr. Gilles Bisson: For the record, just to be clear, there was no agreement of the subcommittee not to have hearings in northern Ontario. It was the majority of the committee, and that's the Liberal government, who said not to have—by the majority.

The Chair (Mr. David Oraziotti): That's fine. Okay, anything further? Mr. Levac or Mr. Brown.

Mr. Michael A. Brown: I believe we should follow practice: Government legislation has priority.

The Chair (Mr. David Oraziotti): Thank you. We'll be moving on here.

GRAND COUNCIL OF TREATY 3

The Chair (Mr. David Oraziotti): The first presenter is Grand Council of Treaty 3, Diane Kelly and Simon Fobister.

Grand Chief Diane Kelly: No, Carol Copenace, Chief Carol Copenace.

The Chair (Mr. David Oraziotti): Okay. Thank you very much and good afternoon. Welcome to the Standing Committee on General Government. You have 15 minutes for your presentation. Any time that you don't use will be divided among members to ask questions. You can just state your name for the purposes of our recording Hansard and you can begin when you're ready.

Grand Chief Diane Kelly: Good afternoon.

Remarks in Ojibway.

My English name is Diane Kelly. I'm currently Grand Chief of Grand Council of Treaty 3.

I just wanted to start by saying that I wanted to thank the committee for hearing the verbal submission today. I also wanted to just briefly apologize for being a little tardy. I've come to realize, as of today, that there are actually slow cab drivers in Toronto. Usually, I have to hang on to the doors. That was like "Go!" Anyway, I don't want to take up too much time here.

I'm just going to start off by reading the submission, of which I have given three copies. I'm not sure who has them, but there are three copies that were provided.

Members of the committee, I appear here today on behalf of the Grand Council of Treaty 3 as the Grand Chief. We thank you for this opportunity to comment on Bill 151 and the proposed modernization of forest tenure in Ontario. The Grand Council of Treaty 3 has as its mandate the protection and advancement of the Anishinaabe people who signed Treaty 3 and the protection and advancement of rights contained within Treaty 3.

As some of you know, Treaty 3 was signed in 1873 and served as the model for all of the so-called numbered treaties that opened up western Canada for settlement. While governments usually think of Treaty 3 as being the official document signed by the crown and the Anishinaabe in 1873, amongst our people, we have a much richer view of the treaty that is backed up by a vast collection of historical documents about Treaty 3 as well as the oral history of our people.

In the course of my comments, I address the link between the question before you and the mandate of the grand council.

Bill 151 marks an opportunity to make serious efforts to correct the historic failures of the government of Ontario to seriously address Treaty 3 and the rights of the Anishinaabe in the legislation governing forest tenures and rights in Ontario. While it appears that some thought has been given to the issue in the drafting of the legislation, we see Bill 151, as drafted, as a missed opportunity to really deal with these issues and start the process of reconciliation.

Our first concern relates to one of the stated purposes of the act, namely to create economic development opportunities for aboriginal peoples. While this is mentioned in the legislation, there is nothing describing how this laudable goal is actually going to be achieved. The creation of the potential for a local forest management corporation to hold tenure does not mean that this will actually happen for First Nations who choose to use this as a vehicle for entering into the forest industry.

We would recommend that the legislation make it clear that these entities can be wholly controlled and operated for the benefit of First Nation communities or groups of communities and not merely groups of local communities which may include aboriginal communities.

Furthermore, the existence of such entities will mean little if there is not a meaningful volume of timber supply made available to them to actually carry on business. At present, there may be opportunities in our territory, given

AbitibiBowater's abandonment of its sustainable forest licence in the Whiskey Jack forest, but this is not true throughout our territory or throughout Ontario.

We believe that provision should be included in the act that would allow for the crown to claw back volume and territory from existing licences in order to make meaningful harvesting opportunities available to First Nations. This process should be carried out in a way that reflects both good economics, which depends upon having an operable, reliable and adequate volume of wood available, and the legitimate claims our people have to actually be able to harvest wood for economic as well as domestic purposes. Thus, a process should be devised to achieve the goal of procuring a meaningful volume to allow First Nations to enjoy the benefits of the forest industry in substance and not just in form.

Closely related to this is the question of ensuring that there is a process put in place allowing First Nations to gain access to a timber supply for non-economic purposes. One of the great failings of the provincial government is that it sees the forest primarily as a resource to be exploited in the marketplace. This drives all management decisions, where the quest is always to maximize commercial gain to the extent possible. Other values such as environmental factors or sustainable indigenous use are viewed only as limiting factors on the commercial exploitation of the forest.

1530

For the Anishinaabe, the forest is our home. Many of our members were born out on the land and draw their sustenance from the land. Even for members who live on reserve, the forest can be an important source of wood for housing and heating. In many of our communities, there is a desperate and chronic lack of housing, or terribly inadequate housing. In our view, it is important that the government, in any tenure reform process, recognize this and address the fact that both under treaty, read in the context of all the promises made, and our remaining aboriginal rights, our communities have a right to access timber for domestic and commercial uses.

While traditional tenures may address commercial rights, they do little to address domestic needs. Furthermore, in order to make that access truly meaningful in the modern world, where there are higher costs, given the changes in the forest over the last 100 years, which have made it harder and more expensive to harvest wood and more expensive to build fixed homes on reserve, the best way to recognize this right would be to allow a right to harvest and sell wood at the community level, at a level consistent with this aspect of our rights.

In the context of both of these goals, we believe that these broadly stated goals will not be achieved if some meaningful and minimum targets are not set. Thus, if there is a genuine commitment to the goal of achieving meaningful aboriginal participation in the forestry industry, then the Legislature should set a target level of participation with, a clear message to the government that they should exercise the power granted under this act to achieve this sort of specific goal or target.

In our experience, not setting targets or goals just results in frustration and disappointment on many fronts. First, it results in the disappointment that flows from the mismatch in expectations that can be created by legislation, where First Nations see some hope that something will at last be done to address the real concerns, when the actual intentions are much more modest. Thus, clear and express goals further transparency. Second, disappointment often arises when even the modest goals that the government may have in mind are not achieved in a timely fashion. One thing I know for certain is that if we do not set a goal, we will not achieve that goal.

To this point, my comments have focused on ensuring the participation of members of Treaty 3 in the forestry industry or in the process of harvesting timber. This is not the only interest of the members of Treaty 3. The Anishinaabe have a deep connection with the land that goes far beyond harvesting timber. We hunt, we trap and we gather on the land, and these activities are protected in our treaty. These rights will have little meaning, however, if the exercise of forest tenure rights across our territory is rendered meaningless through habitat loss and loss of species.

Our people have already suffered terribly from this pattern of resource use in our territory. Once, we had highly productive sturgeon fisheries that were destroyed through overfishing in the 1800s and early 1900s. We had wild rice—manomin—harvesting areas that were destroyed by flooding for hydroelectric facilities. Our whitefish industry and domestic fishery has been destroyed through mercury poisoning.

In more recent years, our people have experienced an ongoing decline in our ability to hunt, trap and live off the land, as large-scale industrial logging has consumed so much of our territory. While we have been continually assured for many years that this harvesting is being done in an environmentally respectful or sensitive manner, our experience has been otherwise. Our hunters and trappers constantly report the decline of these activities, and the devastation in their family territories and traplines, that we on the grand council cannot ignore. This industrialization of our woods has led to court cases and blockades and will continue to stand in the way of true reconciliation.

In our view, the management of forest tenures in a way that respects the Anishinaabe way of life and the maintenance of Treaty 3 rights is key to a successful modernization of tenure. This respect has to go beyond merely giving the people of Treaty 3 an economic opportunity to participate in the industry as tenure holders; it really requires three core reforms, which do not appear to be meaningfully addressed in the proposal.

First, it requires the institution of true co-management or, at the very least, a meaningful consultation required by cases such as Haida and Mikisew. This means a real role in addressing matters such as the rates of harvest, the methods of harvest and the setting of environmental and ecological goals and policies in Treaty 3 lands. This could be addressed in the legislation by providing for express consultation and accommodation requirements in

respect to these issues and in respect of the process whereby the minister can give directions to the local forest management corporation—section 22. There also needs to be a clear affirmation of the duty to consult and accommodate in the way in which these boards are established and tenures transferred to these boards.

Second, a strong commitment to the principle of overarching conservation with a view to preserving not only wildlife habitat but also wildlife habitat suitable for preserving the way of life of the aboriginal people of Ontario generally and the people of Treaty 3 specifically needs to be included within the legislation.

Third, we cannot be blind to the fact that Treaty 3 rights have been essentially run over in the past and that there has been and will be significant economic benefits taken by Ontario from our lands in the future.

While some say that Treaty 3 justifies this, in our view, the real spirit and intent of Treaty 3 was one of sharing. We allowed access to our lands but did not agree to give up our way of life or our rights to enjoy the benefits of our land. No one can seriously think that the annual annuity that we receive, even if it had been adjusted for inflation, could be seen as payment for the enormous wealth that has been drawn out of our territory over the last 140 years and will be taken in the future.

Thus, an inevitable part of any proper reform of forestry tenure is revenue-sharing. Proper revenue-sharing involves the sharing of the rents and taxes that the crown gathers as a result of the forest industry. It is different from the return from our investment in the forest industry through participation in the industry. Revenue-sharing represents a form of payment for the sharing of our lands and the losses and injuries our communities suffer as a result of the degree of taking caused by modern methods of logging in volumes unimagined in the 1870s.

In conclusion, we see this effort as a real opportunity to make change. If it is to work, this Legislature should take hold of the problem at a much deeper level. It has been almost 30 years since section 35 of the Constitution Act, 1982, came into effect. It has been almost 140 years since Treaty 3 was signed. Has not the time come to finally address these real issues that our rights raise for this province?

Finally, I just want to conclude by saying that I've been told very strongly by our elders and our leaders over the years that we've always protected our lands, and we've always been interested in our lands. It's not just the rights; we also have responsibilities to the land, and that includes, of course, the forests. All of these things, I wanted to underscore, have to be managed in a sustainable way for the future, for the future generations. Our people aren't going anywhere; your people aren't going anywhere. Let's try and work together to come to some sort of solution that's mutually beneficial for everyone.

With that, meegwetch.

The Chair (Mr. David Orazietti): We have time for one brief question. Mr. Hillier, if you have a question—

Mr. Randy Hillier: Thank you very much. It sounds to me like, even though we've heard from the Liberal

government that there were extensive consultations, you're not very reassuring to us that you've had those consultations or that any consultations that you've had have been incorporated into Bill 151.

Grand Chief Diane Kelly: Both of those are right. We feel that we haven't been properly consulted. We also feel that our concerns have not been addressed within the bill, as we see it.

Mr. Randy Hillier: And once again, you had to come down to Toronto to voice this, instead of—

Grand Chief Diane Kelly: Well, that's right. It would have been nice to have a hearing in the north. Absolutely.

The Chair (Mr. David Orazietti): That's time for your presentation. We appreciate your coming in today.

DOMTAR

The Chair (Mr. David Orazietti): Our next presentation is a teleconference with Domtar. Mr. Booth, are you there?

Mr. Rob Booth: Yes, I am.

The Chair (Mr. David Orazietti): Good afternoon. Welcome to the Standing Committee on General Government. You have 15 minutes for your presentation. This is an all-party committee conducting hearings on Bill 151, as you know. Any time that you don't use of your 15 minutes will be divided among members of the committee to ask you questions. Just state your name for our recording purposes, and go ahead when you're ready.

Mr. Rob Booth: Okay, thank you very much. My name is Rob Booth. I'm currently the forest lands manager for our operations in Dryden. I'm also here today to speak on behalf of our operation in Espanola.

Can everybody hear me okay?

The Chair (Mr. David Orazietti): Yes, everyone can hear you.

Mr. Rob Booth: Okay; Thank you very much for this opportunity to present our perspective on Bill 151. I'd first like to take a couple of minutes just to give you a brief overview of our operations and then highlight a number of the critical areas of the bill that are of concern to us.

Domtar Corp. is the largest integrated manufacturer and marketer of uncoated free-sheet paper in North America and the second-largest in the world based on production capacity. Our company is also a manufacturer of paper-grade, fluff and specialty pulp, and designs, markets and manufactures a wide range of business, commercial and publishing papers.

Approximately 8,500 people are employed across our 13 pulp and paper operations, of which 11 are located in jurisdictions in North America.

1540

In Canada, we have four manufacturing facilities, two of which are in Ontario, those being a pulp and paper mill in Espanola and a pulp mill in Dryden. These Ontario mills directly employ about 860 people. We also manage two sustainable forest licences here in north-western Ontario, where an additional 400 people are directly employed by harvesting contractors, bringing the

direct employment in Ontario to about 1,200 people. As such, we're the largest employer in each of our operating communities, Dryden and Espanola, and our operations are therefore key economic drivers in these regions.

As we're all well aware, the forest industry has experienced some very challenging operating conditions over the last few years. It's in this backdrop that we provide our perspective on Bill 151.

As you will hear, our comments are aimed at clarifying the rules for doing business in Ontario, focusing on the ability to access reliable, cost-competitive fibre.

We are not in support of Bill 151, as originally tabled for first reading on February 23. Having said that, we do, however, want to emphasize that on several occasions since the bill was introduced, Domtar has been involved in discussions with the working group, which I'm sure this committee has heard about before, that was struck by MNDMF regarding potential amendments to the bill. We've been very encouraged by these discussions. We are now pleased to provide this committee with our perspective on the items that remain of most concern to Domtar for identifying the key rules of doing business in Ontario.

Perhaps the most serious concern of the bill, as it was originally tabled, was the minister's ability to cancel licences, commitments and supply agreements for unspecified reasons. Through our discussions with MNDMF, they have agreed that they would put forward an amendment to strike section 41.1(2)(c), and we are in support of that.

Another concern was the requirement for, in our view, more specificity around the conditions in which licences, commitments and supply agreements could be cancelled. MNDMF, again, through the working group discussions, has agreed to some wording changes, specifically out of section 41.1(2)(b), where there was a suggestion or a proposal to change the word "optimal" to a little bit clearer definition of "consistent and sufficient" use of fibre. They further proposed that this definition would be laid out in each licence and in a regulation.

We support the change from the use of "optimal" to "consistent and sufficient." We also have to emphasize that it's critical that this definition be defined in a regulation in a very consistent way to allow consistent application on a level playing field across the province. We would be very concerned if the definition was to be laid out in individual licences. Our idea on that would be that there could be a lot of variability in the definition and, therefore, the interpretation across the province.

Another thing that we also want to note here is that the act must ensure due process, rights of representation and opportunities for compensation in the event of cancellation. Through the working group discussions, the MNDMF has come back and agreed to insert wording into Bill 151 that would be very similar to the wording in the CFSA around rights of representation. We're supportive of this. However, we would also look for the addition of a provision where there would be an opportunity for compensation—a situation where, perhaps, the minister has exceeded their authority—for

actions that were inconsistent with the act. We would see Bill 151 not necessarily explicitly allowing this, but would look for perhaps a similar approach to the CFSA, which was silent on it. However, as Bill 151 is currently written, the immunity provisions for the minister prohibit any opportunities for cancellation.

Another important item for us is around the importance of protection of confidential information. This is on the changes to the CFSA that would allow for the collection of timber pricing data. MNDMF has come forward with a suggestion to ensure confidentiality of the commercial timber transaction data: to use an independent third party to collect the data and to ensure that the information is not subject to freedom-of-information requests. We're supportive of this proposed amendment.

The final item here is around where the bill allows for the creation of additional LFMCs beyond the original two. There was a lot of talk at the working group about there just being two original pilot projects. As originally written, the bill did not reflect this discussion, and it's very open-ended. MNDMF has come back with a suggested amendment around inserting a new subsection into the act that would indicate that a review was done before any new ones would be established. Our comment on that would be that we would absolutely prefer to see that, based on all of the discussions and based on some very clear direction from the minister and his staff that we are really just looking at two of these to test principles, etc that we would definitely like to see that indicated in a preamble to the act.

Our last item here is more of a comment for the consideration of the committee and just an understanding piece, maybe. It's around free-market wood and market-based timber pricing. As we move forward with the concept of a portion of wood supply in Ontario being free-market wood, which is definitely part of the discussions to date here, we just want to make you aware that the cost of wood in jurisdictions adjacent to Ontario is often lower than it is in Ontario. Energy costs, taxation and regulations all contribute to this. As a result, facilities from outside the province can often afford to pay more for wood that they receive in Ontario. By including these transaction prices from facilities outside in the base pricing of Ontario, our base wood costs would increase in Ontario. Again, that's more of a comment or an understanding piece for the committee.

In summary, Mr. Chair and members of the standing committee, it's critical that the final wording of Bill 151 clearly outline the rules for doing business in Ontario, as business certainty is critical to our ability to attract capital within Domtar. Of the 11 North American jurisdictions where Domtar has pulp and paper manufacturing operations—three of these are in Canada—Ontario has the highest cost structure. Business certainties with respect to the rules that govern access to fibre are critical to maintaining the future viability of our operations in Ontario. Our support of Bill 151 is contingent on the final wording of the bill accurately reflecting the six amendments MNDMF has proposed to the working group and a

careful consideration of and action on the concerns we've indicated here today.

We appreciate our involvement in the discussions to date, and we look forward to continuing to work constructively with MNDMF to finalize these important items before the bill moves to third reading.

The Chair (Mr. David Oraziotti): Thank you very much for your presentation. We have time for a question. Mr. Bisson, go ahead.

Mr. Gilles Bisson: Thank you very much for presenting, Rob. I've got two questions. I'm going to say it in one, because they're pretty short. The first question is, do you think that this bill is essential to the operation of your business, or does what we've got now actually work? Number two, you made the point that the wood costs outside Ontario are cheaper, and I didn't quite understand how you made the link to the price of wood going up under the tenure system, if you could explain that as well.
1550

Mr. Rob Booth: With regard to wood costs from outside the province, as I said, often jurisdictions outside of the province have lower cost structures, so they get a large amount of their wood adjacent to their operations at relatively low cost. They occasionally have to come into Ontario, let's just say, for their last few sticks of wood or their last increments of wood, and they're often willing to pay more for that. As we move forward—and there's pretty clear indication that that's where things want to be moved here—and try to identify some base pricing in Ontario, those higher prices are going to increase our average costs.

Mr. Gilles Bisson: And the first question: Is this change essential to the operation of your business, this bill?

Mr. Rob Booth: We've got two locations: Espanola and Dryden. We absolutely want to make sure things are done right, but we also want to make sure it gets done. We feel there's a lot of momentum, a lot of work done, a lot of good work back and forth. Anything that can be done to improve the cost structure and our ability to attract capital within Domtar is good.

Mr. Gilles Bisson: But does this bill do that, is my question

Mr. Rob Booth: It helps, yes, it does. It helps because it clarifies some of the rules. It doesn't go very far, as written, but it does clarify some of the rules around that.

The Chair (Mr. David Oraziotti): Thank you very much, Mr. Booth. That's time for your presentation this afternoon. Thanks for joining us.

Mr. Rob Booth: Thank you.

The Chair (Mr. David Oraziotti): Have a good afternoon.

NIPISSING FOREST RESOURCE
MANAGEMENT INC.

VERMILLION FOREST MANAGEMENT
COMPANY LTD.

The Chair (Mr. David Oraziotti): Our next presentation: Nipissing Forest Resource Management Inc. Mr.

Street, good afternoon. Welcome to the Standing Committee on General Government.

Mr. Peter Street: Good afternoon. Thank you very much for allowing me to speak.

The Chair (Mr. David Oraziotti): No problem. You have, as you know, 15 minutes for your presentation. Any time you don't use will be divided. State your name and you can start when you're ready.

Mr. Peter Street: My name is Peter Street. I'm with Nipissing Forest Resource Management and Vermillion Forest Management Co.

Both Nipissing Forest Resource Management Inc., in North Bay, and the Vermillion Forest Management Co., in Sudbury, are co-operative-type sustainable forest licence holders, commonly called SFLs. Both co-op SFLs are made up of a mixture of larger corporations, smaller family-run sawmills and independent logging companies. Both companies have First Nation and non-shareholder representation on the board of directors.

The shareholders and independent operators have the following concerns with Bill 151 in its current form.

(1) Forest resource licences, commonly called FRLs, are used by all of our licensees, big and small, to finance equipment purchases and to maintain lines of credit. They are also used by our family-run sawmills to obtain credit to finance mill improvements. This act would give the minister the ability to cancel forest resource licences for undefined reasons and this will, in effect, limit their value in obtaining required financing

(2) Cancellation of a forest resource licence may also result in additional hardships to other licensees within our co-op SFLs. The licensees pay for management costs based on their percentage of total harvesting rights. The cancellation of an FRL will mean that other licensees, who haven't done anything wrong, will have to bear the greater share of the cost to run the SFL, something many of them cannot afford to do. The proposed act does not speak to the government covering these costs. The alternative is to lay off staff and to consider closing the sustainable forest licences.

(3) Over the past 15 years, many independent operators have sold and purchased their harvesting rights from one another. FRLs have real value. The proposed legislation would unfortunately limit the ability of our SFLs and licensees to sell harvesting rights going forward. Buyers will be difficult to find. Who would buy something with no or limited guarantees? In some cases, licensees have used the sales of their harvesting rights to supplement their retirement. All this will be for nothing with the passing of Bill 151.

(4) The proposed act also allows the minister to cancel sustainable forest licences. One of the main reasons the local forest industry agreed to take over from the MNR the day-to-day responsibilities of managing the forest was to have greater security through a 20-year licensing arrangement, one that is renewed every five years, based on good performance. Bill 151 takes the security away and breaks a deal and understanding we thought we had with the government.

(5) Our two SFLs have also done a considerable amount of silvicultural work improving the quality and the health of the Nipissing and Sudbury forests; the Sudbury forest especially, with all of the fume damage. Between the two forests, over \$1 million has been spent by the licensees on pre-commercial thinnings and stand improvement operations. The cancellation of our SFL without compensation is not fair. The potential to lose our licence will affect future decisions in continuing to invest in the health of the forest and questions the value of investing in research and development if benefits do not accrue to the investor.

(6) Licensees—the loggers—have also directly invested in improving the health of the forest through preparation and seed cuts in white pine and tolerant hardwood stands. Licensees have removed the poorer-quality timber and look to realize the benefits when returning to these stands to do the first and final removal cuts when the better timber is available for harvesting.

(7) Forest resource licensees have developed an extensive system of roads and water crossings across both forests. These roads are widely used by the general public and other stakeholders such as the mining industry. With the cancellation of a sustainable forest licence or a forest resource licence, does the government of Ontario realize they're taking over the responsibility for this infrastructure and there will be considerable additional costs to the government?

(8) The ongoing biofibre competition has not resulted in any significant announcements for our two forests and it appears as though our level of utilization will remain low. The minister, having the ability to cancel supply agreements with the existing companies, will limit future investments and will chase away any new potential business. In Mattawa, for example, the community has lost a major sawmill and their largest employer. The community is now in discussions with a company that wants to set up a pellet plant and a cogen facility. They are asking our licensees for long-term fibre supply agreements. How can we commit volumes to them when we are unsure about our future as a result of this proposed legislation? FRL volumes equate directly to jobs in woodlands, mills and support industries. We cannot survive solely on open-market wood.

(9) We understand that the current Crown Forest Sustainability Act may limit the minister's authority around cancellation of various timber rights, but this proposed legislation goes too far. At least when the minister is planning to cancel a licence or supply agreement, a warning should be given and the opportunity to correct the problem or the situation provided.

Markets and businesses do not like uncertainty. This proposed legislation is causing us to worry because of the uncertainty around the value of our commitments and the value of our licences.

Thank you.

The Chair (Mr. David Oraziotti): Thank you very much for your presentation. We have some time for questions. Mr. Brown, go ahead.

Mr. Michael A. Brown: Thank you, Mr. Street, for coming. You're bringing a perspective we haven't heard so far: one of co-operative SFLs, essentially.

I want you to maybe help us a little bit and tell us which mills receive timber from your members and how the pricing occurs for that.

Mr. Peter Street: In both the Nipissing and Sudbury forests we rely heavily on the fact that we're FSC-certified. Our pulp goes to Domtar's mill in Espanola and to Tembec's mill in Timiskaming. A lot of our shareholders have family-run sawmills in smaller communities in and around the North Bay and Sudbury areas, so the wood is sold to them.

Basically, most of the wood is sold on an open-market basis but we do have wood directives that are helpful in moving the poplar and aspen to GP's mill in Englehart.

Mr. Michael A. Brown: In this arrangement, then, you negotiate with Domtar and Tembec?

Mr. Peter Street: The licensees that harvest the timber negotiate the sale of the wood they harvest.

1600

Mr. Michael A. Brown: I represent Algoma-Manitoulin, so I'm reasonably close. Is there an issue because of the kind of worldwide crisis in forest products—I think that's fair to say. Has there been some real pain amongst your membership in terms of ability to sell and markets for your products?

Mr. Peter Street: Yes, it's been pretty tough for the last five years. People have been sitting at home because they haven't been able to find markets for the wood that they have available to them.

Mr. Michael A. Brown: You obviously were here when we were listening to Mr. Booth from Domtar talking about some of the amendments that he has suggested. Would those help, if the government moved forward with those, in providing at least some assurance—more than you have so far in the bill?

Mr. Peter Street: Yes, very much. Those proposed amendments, as I understood Mr. Booth, sounded pretty good to us.

The Chair (Mr. David Oraziotti): Okay, that's time. Mr. Hillier or Mr. Clark? Mr. Clark, go ahead.

Mr. Steve Clark: Thank you, Mr. Street, for your presentation. I just want to pick up on your comments previously with the parliamentary assistant. It's too bad that the government didn't think you were big enough to come and share those amendments with you, and I think that's what northern hearings would have provided for us. It would have given us an opportunity that everyone would have had the same message.

One of the things that I would like to ask you your opinion on, because of some of the uncertainty that this bill has provided in the market, is whether you feel that perhaps something like a sunset review, where this bill would be revisited by MPPs in the Legislature, would be beneficial for the industry at some point: to hear your concerns and some of your experiences with the way the legislation would be implemented down the road. So, a sunset review?

Mr. Peter Street: I think it's really important. These proposed changes are major steps for us, so they need to be reviewed, for sure.

The Chair (Mr. David Oraziotti): Any further questions?

Mr. Steve Clark: No, that's good.

The Chair (Mr. David Oraziotti): Thank you very much. That's the time for your presentation. We appreciate you coming in today.

Mr. Peter Street: Thank you very much.

NORTHWESTERN ONTARIO MUNICIPAL ASSOCIATION

The Chair (Mr. David Oraziotti): The next presentation is the Northwestern Ontario Municipal Association—which is teleconference or video conference? It'll be video conference. Okay. Mr. Ron Nelson and Iain Angus: Good afternoon, gentlemen. Can you hear us?

Mr. Ron Nelson: We can hear you. Can you hear us?

The Chair (Mr. David Oraziotti): We certainly can. Good afternoon and welcome to the Standing Committee on General Government. You have 15 minutes for your presentation. Any time that you don't use will be divided among members for questions. You can start by stating your name and begin when you're ready.

Mr. Ron Nelson: Thank you so much. Good afternoon, gentlemen. My name is Ron Nelson. I am the president of the Northwestern Ontario Municipal Association and mayor of O'Connor township. With me is Mr. Iain Angus, vice-president of NOMA and a councillor with the city of Thunder Bay. Mr. Angus is also the former chair of the Ontario Forestry Coalition. We thank you for the opportunity to provide our input on Bill 151 via videoconference.

We had hoped that the committee would have travelled to northern Ontario for these meetings so that you could personally meet the people whose livelihoods are dependent upon getting this legislation right. While it is true that the Ontario government held extensive consultations across the north in the lead-up to the drafting of Bill 151—and we do appreciate those consultations—it is our contention that what we said has not been translated into the act. For legislation that is primarily aimed at one area of the province, the vast boreal forest of northwestern Ontario, of northern Ontario, it is essential that the communities and the people who depend on the forest for their livelihood and that of their children and grandchildren should be respected enough to have their legislative committee physically hold the hearings in this area.

These issues are not merely theoretical for me. I work in the forest industry and my livelihood is dependent on a successful forest sector. The same can be said for many of the municipal councillors across the northwest. We are here today both as community leaders and as individuals whose families rely on the vibrant, recovered forest industry.

Councillor Angus and I were present at a media conference held by Minister Gravelle on January 13, where

he announced the next steps to the forest tenure and pricing review. During that event, Minister Gravelle announced the establishment by regulation of two local forest management corporations and the shift from single-company sustainable forest licences, SFLs, to enhanced shareholder SFLs.

The minister said, “Establishing these two models—LFMCs and enhanced shareholder SFLs—would enable us to evaluate their performance against predefined criteria, leading us to make wise and informed modifications on the path forward. It would also allow us to see how each model performs in relation to our objectives of creating opportunities for new entrants, encouraging full utilization of crown timber, bringing greater market forces to bear on allocation and pricing of crown timber, and fostering greater local and aboriginal community involvement.”

However, Bill 151, in its current form, does not provide clarity on these two commitments: First, the bill does not limit the creation of LFMCs to two pilot models, which breeds uncertainty for industry members; second, the bill does not include recognition and support for a move to enhanced shareholder SFLs.

As clearly outlined by the minister on January 13, the legislation was supposed to have included these two systems operating for a trial period to allow the evaluation and comparison of which worked best. Yet Bill 151 proposes the creation of one or more LFMCs and completely disregards a trial of enhanced shareholder SFLs.

The Ontario Forest Industries Association has been clear in their desire that both options be tested together for a period of five to seven years, prior to the final implementation of any single system. However, it appears that rather than making a decision based on experience and feedback through a clearly defined trial period, the drafters of this legislation have firmly tied on the blindfold and are now swinging wildly in the hopes that they will eventually find the piñata. As legislators, you have the ability to correct this omission.

NOMA believes that a minimum five-year trial period that includes the creation of only two LFMC pilot models, as well as support for the enhanced shareholder SFLs, would provide an appropriate opportunity for comparison and evaluation, and would reduce further uncertainty for producers. We trust that the committee will see the value in what the minister originally promised and amend Bill 151 before it is sent back to the Legislature for the reporting stage and third reading.

In regards to the creation of local forest management corporations, Bill 151 outlines the objects of the corporation. NOMA is concerned with the wording of object 2: “To provide for economic development opportunities for aboriginal peoples.”

While we fully support economic development opportunities for aboriginal peoples, we are concerned that this object does not include reference to economic development opportunities for northern and rural communities. We trust that this is simply an oversight, and we ask that the objects be amended to include northern and rural

communities in the goal of providing economic development opportunities.

NOMA is extremely concerned with some of the unexpected items that are included in Bill 151. In particular, we are distressed with the expansion of government authority for the minister or the Lieutenant Government in Council to cancel licences, commitments and supply agreements for any reason.

The changes go even further by removing existing rights of notice and appeal and any legal recourse or remedy if wood is unfairly taken away.

1610

These proposals are tantamount to my mortgage holder being provided the authority to take back my house without just cause and without any opportunity for me to appeal that decision. Clearly, such a change to the Mortgages Act would be met with outrage and public demonstrations, yet somehow, the government has decided that applying those practices to our forest producers is tolerable. These changes are absolutely unacceptable and must be removed from Bill 151 immediately.

Committee members, the future of our communities is in your hands. The effects of Bill 151, whether good or bad, will be felt across northwestern Ontario. Please take the time to get this legislation right to ensure that our forest industry can rebound.

Over the years, NOMA has always been a family—a family that looks after the citizens and all of the people in northwestern Ontario. Consider a member of your family with a terminal illness, and watching them losing the fight when they were once vibrant, when they were happy and proud. Now all you can do is sit back helplessly and watch that family member slip away. We are very proud in northwestern Ontario, and NOMA has always been very proud of its people. The question that I have for you as well is, have you heard us? Have you truly heard what we’ve said?

The Chair (Mr. David Orazietti): Thank you very much for your presentation. I appreciate your comments today. We’ve got some time for questions. Mr. Bisson, you’re up first.

Mr. Gilles Bisson: First of all, thanks for taking the time to present, and good day to both of you.

To your last point, whether you’ve been heard, I take it that what you’re saying is that, clearly, the north is not being listened to and properly consulted in regard to this particular bill. That’s the point that you’re making?

Mr. Ron Nelson: What I am saying is whether we are being heard is that the bill that was presented and what the minister presented back on the 13th—we had acceptance. Now that that has changed, what we’re saying is, are you hearing our concerns that we brought to the table today?

Mr. Gilles Bisson: Okay. So you’re saying what was originally discussed at the pre-hearings, previous to the introduction of the bill, is very different from what you’re seeing in the legislation.

Mr. Ron Nelson: Very much so. And—

Mr. Gilles Bisson: Sorry, go ahead.

Mr. Ron Nelson: And in particular, what the minister promised when he made the announcement of the tenure reform is different than what's in the bill. We just want you to go back to what the minister promised, because we liked that.

Mr. Gilles Bisson: Is the government trying to rush this process too much? Should we be in a hurry to pass this some time in April or May?

The Chair (Mr. David Orazietti): Very briefly, Mr. Bisson.

Mr. Ron Nelson: We recognize the reality that the Legislature will rise in June. That's the last chance to meet. We would like to get this matter resolved. Some of our communities are very anxious to be one of the pilots. We would not want to disrupt that.

Having said that, though, we want you, as a legislative committee, to get it right, to listen to what the minister promised and to refine the act accordingly so that we can all celebrate its adoption by the Legislature.

The Chair (Mr. David Orazietti): Thank you. Next question, Mr. Brown of the Liberal caucus. Go ahead, Mr. Brown.

Mr. Michael A. Brown: Good afternoon, Mr. Nelson and Iain. How are you?

Mr. Ron Nelson: Good.

Mr. Michael A. Brown: I don't know that you had the opportunity to hear the Domtar presentation just a few minutes ago, where they outlined during an ongoing consultation with the ministry—which has been going on for some time; the industry and the ministry have been going forward—a number of amendments that they felt were necessary. If the government were to proceed along those lines, would that be acceptable to your membership?

Mr. Ron Nelson: We look forward to the amendments to clean this act back up to where it was supposed to be back on January 13, when you did have industry and municipal leaders endorsing that program as a start. Yes, we would very much appreciate seeing amendments done to this to ensure that we get back to the way the bill was originally.

Mr. Iain Angus: We did not hear the specific amendments that were offered by Domtar, so we can't comment on the specifics of those. But we'll be happy to review Hansard once it comes out and to take a look at that.

Mr. Michael A. Brown: Good. Thank you. Keep in touch.

The Chair (Mr. David Orazietti): Thank you very much, gentlemen. That's time for your presentation. We appreciate your time this afternoon.

Mr. Iain Angus: Thank you.

UNION OF ONTARIO INDIANS

The Chair (Mr. David Orazietti): Our next presentation is by the Union of Ontario Indians. Chief Madahbee, welcome to the Standing Committee on General Government. As you're aware, you have 15 minutes for your presentation, and any time that you don't use will be

divided among committee members for questions. You can just start by stating your name. Start whenever you're ready.

Grand Council Chief Patrick Madahbee: *Remarks in Ojibway.*

I'm Patrick Madahbee. I'm the grand council chief for the Anishinabek Nation. I'm from Manitoulin Island. I see my friend Mike sitting over there.

I want to just give you a little bit of background as to who I represent in the Anishinabek Nation. We are a collective of the Anishinaabe people known as the Algonquin, Chippewa, Lenape—or Delaware—Mississauga, Nbiising, Odawa, Ojibway and Potawatomi, who have existed on this land since time immemorial. We are the original inhabitants of the Great Lakes region and have been using the resources of the land and water, to ensure our survival, for thousands of years. It was our nations that were recognized and referred to by King George of Great Britain when he issued the Royal Proclamation of 1763.

Today, we are comprised of 40 First Nations throughout Ontario. Our member First Nations are signatories to several treaties with the crown, including the Bond Head Treaty of 1836, the Robinson Treaties of 1850, the Manitoulin Treaty of 1862 and the Williams Treaties of 1923, to name a few. Anishinaabe people and our member First Nations continue to hold aboriginal treaty rights over tracts of land which we shared in the treaties that we signed with the crown.

You will see from the map appended to your written submission that the member First Nations of the Anishinabek Nation are located throughout Ontario.

We incorporated the Union of Ontario Indians in 1949 as a secretariat to the member First Nations across Ontario. Today we represent approximately 30% of the total First Nations population in Ontario and 7% of the total First Nations population in Canada.

I'd like to talk now a little bit about the new forest tenure and pricing system for Ontario. I remember when Mr. Gravelle began talking about a new proposed framework for modernizing Ontario's forest tenure and pricing system in 2009. He indicated that the new tenure and pricing reform review would be guided by a number of principles, including a respect by Ontario for the aboriginal treaty rights protected by section 35 of the Constitution Act of 1982, and a commitment by Ontario to meet its constitutional obligations. This initially sounded encouraging.

He also said that the modernization of its tenure and pricing system would be characterized by, among other things, the creation of forest management business entities that would foster a greater level of local and aboriginal community involvement in decisions about the economic management of crown forests.

Again, we were encouraged by this commitment and began to wonder how the legislation would shape up and especially how the new legislation would meet these objectives. Well, today I would like to tell you that unless there are some important amendments that would be

considered by members of the Standing Committee on General Government, it is doubtful that the new tenure and pricing reform framework will meet the objectives and commitments made to the aboriginal peoples of Ontario.

I'd like to start off by simply saying that our assessment of the new act will depend on how it meets two stated objectives: first, whether the new act will truly represent a commitment by Ontario to respect the aboriginal and treaty rights of the member First Nations of the Anishinabek Nation, which are protected by section 35 of the Constitution, and Ontario's commitment to meet its constitutional obligations; and, secondly, whether and to what extent the new act, as it currently reads, and these new local forest management business entities that you're going to set up under the act, will help foster a greater level of local and aboriginal community involvement in decisions about the economic management of crown forests in Ontario.

1620

I would like to wrap up with some suggestions for reform to the act, which we believe can actually make a difference and, if implemented, will foster a greater level of local and aboriginal community involvement in decisions about the economic management of the crown forests in Ontario and, as a result, achieve more equal participation by aboriginal communities in the benefits provided through forest management planning.

Subsection 3(1) of the act provides for the incorporation of one or more Ontario local forest management corporations. Some of their objects are, "1. To hold forest resource licences and manage crown forests in a manner necessary to provide for the sustainability of crown forests in accordance with the Crown Forest Sustainability Act, 1994 and to promote the sustainability of crown forests." But, most importantly for our people, "To provide for economic development opportunities for aboriginal peoples."

First, from what I understand, the primary legal instrument in Ontario that authorizes the harvesting forest resources in Ontario is the sustainable forest licence. These new local forest management companies would be authorized to harvest forest resources in Ontario by having a sustainable forest licence issued to them by Ontario, with similar obligations and conditions to those found in the existing SFLs. Of strategic importance to our communities is paragraph 20 of the licence, which states, in relation to aboriginal opportunities, "The company shall work co-operatively with the minister in local aboriginal communities in order to identify and implement ways of achieving a more equal participation by aboriginal communities in the benefits provided through forest management planning."

Despite the promise of this condition that is included in every sustainable forest licence in Ontario, the Anishinabek Nation and its member First Nation communities have some concerns over the matter and how sustainable

forest licences are monitored to ensure compliance with this legal condition of their licence.

When we're looking at our level of involvement and whether our member First Nation communities have achieved a more equal participation by aboriginal communities in the benefits provided through the forest management planning, this despite being a legal condition in every sustainable forest licence, we find inequality in participation. In fact, we found we are not sharing equally in the benefits provided through forest management planning, including sharing in any of the economic benefits from forest management planning.

We asked the MNR how sustainable forest licence holders are monitored to ensure compliance with paragraph 20 of their licence, and we are told that independent forest audits are completed every five years as one way of ensuring compliance by all sustainable forest licence holders. We looked at these audits for ourselves, and it was disappointing, to say the least. For example, we looked at the independent forest audits completed in 2007 for the Algoma forest, for the period of 2001 to 2006; Mr. Oraziotti, the Chair here, will be familiar with the Algoma forest, as it's in his local riding near Sault Ste. Marie. The audit reported on the condition that "MNR district managers are to conduct negotiations with native communities at the local level in order to identify and implement ways of achieving a more equal participation by aboriginal peoples in the benefits provided through forest management planning."

There are seven First Nations on or adjacent to the Algoma forest, including the Michipicoten First Nation, Chapleau Ojibway, Missanabie Cree, Mississauga First Nation, Thessalon First Nation, Ojibways of Garden River and Batchewana First Nation. Michipicoten First Nation, Mississauga First Nation, Thessalon and Ojibways are all members of the Anishinabek Nation.

For the five-year period of 2001 to 2006, here is a representative sample of what the forest audit had to say on the conduct of negotiations with native communities at the local level in order to identify and implement ways of achieving more equal participation by aboriginal people:

"In this respect, both the Wawa MNR and Sault Ste. Marie MNR have shown effort through meetings with First Nations of the Algoma forest. Clergue"—which is the SFL holder—"also participated in these meetings and in some instances took a leadership role. During the last two years of the audit term, Wawa MNR had several discussions with Michipicoten First Nation regarding harvesting opportunities and has assisted with the development and review of a forestry business plan for harvesting. Positive progress has been slow due to lack of training and staff turnover at the band office. Some line cruising was completed in 2003 to establish species and allocations potential on the forest."

With the greatest of respect, if this is all the audit has to show for five years and having seven First Nations communities to work with, it can hardly be said that the negotiations identified and implemented ways of achiev-

ing a more equal participation by aboriginal peoples. Having meetings or taking a leadership role in some instances, or having several discussions about harvesting opportunities, without resulting in any actual harvesting by First Nations communities or their member businesses over a five-year period falls well short of meeting the obligation of both the company and the Ministry of Natural Resources, as set out in the licence.

Similarly, reporting that “some line cruising was completed in 2003 to establish species and allocations potential on the forest” also falls short of our expectations. You will see other findings in your report, but the common theme running through this audit seems to be reporting about how many meetings were held and less on what was actually accomplished. We looked at other audits and they followed the same pattern. The lack of results speaks volumes about the commitment of the Ministry of Natural Resources to meeting this objective and ensuring compliance by all sustainable forest licence holders with terms and conditions of their licences.

I’d like to talk about how this grim situation can improve for the better. As we all know by now, the Supreme Court of Canada in *Haida* has now established that the foundation of the legal duty of consultation which is owed to aboriginal people is grounded in the honour of the crown and the goal of reconciliation, and suggests that duty arises when the crown has knowledge, real or constructive, of the potential existence of the aboriginal title or right and contemplates conduct that might adversely affect them.

The main question in all situations is, what is required to maintain the honour of the crown and to effect reconciliation between the crown and the aboriginal people with respect to the interests at stake? The effect of that consultation may be to reveal a duty to accommodate. Where accommodation is required in making decisions that may adversely affect as yet unproven aboriginal rights and titles, the crown must balance aboriginal concerns reasonably with the potential impact of the decision on the asserted right or title and with other societal interests.

The act at subsection 3(1) provides for the incorporation of local forest management corporations, and section 5 of the act sets out the objects of the new forest management companies. Among their purposes is to hold forest licences and manage crown forests in a manner necessary to provide for the sustainability of crown forests. They are to do this by having a sustainable forest licence issued to them by Ontario. The license would contain similar obligations and conditions to those in existing sustainable forest licences, including paragraph 20 of the existing licences. It’s difficult to imagine how any activities authorized under a sustainable forest licence would not affect any treaty rights of the member First Nations or the Anishinabek Nation.

Using the Algoma forest unit again as an example, that area was licensed in 2002 to Clergue Forest Management Inc. That licence covers a total area of 8,577.1 square kilometres in the territorial districts of Sudbury and Thunder Bay, and is good for 20 years. This same area is

included within the area covered by the terms and conditions of the Robinson Huron and Robinson Superior treaties of 1850. Under these treaties we have the rights to hunt and fish in that same area.

Once logging started in the area, there were parts of the treaty area that we could not use anymore to go hunt and fish because trucks and heavy equipment were moving around—and it wasn’t our people driving those trucks, operating equipment, cutting the trees or building roads through our lands. If we wanted to take any wood for our fires, we were told we need permits from the MNR. If we wanted to build hunting camps as part of our treaty right to hunt, we were told we needed to comply with MNR’s incidental cabin policy.

So it’s pretty clear how the actions of the crown in this act will continue to interfere with aboriginal and treaty rights. But we believe that we can work together on how these infringements on our treaty can be mitigated or accommodated, and that’s through changes to the legislation.

You will see that subsection 23(1) of the act provides that “at least three months before the beginning of each fiscal year or by such other date as the minister specifies, each Ontario local forest management corporation shall submit its business plan for the fiscal year to the minister for approval.” First of all, there’s no reason why the minister could not set up a few 100% aboriginal-owned local forest management companies and let our First Nations directly manage the forest resources. That would be a real tenure reform.

For the rest of the local forest management corporations, again, there’s no reason why the minister could not make it mandatory for all local forest management companies to include in their business plan a framework for ensuring that economic and employment opportunities will be provided to aboriginal communities whose treaty and aboriginal rights may be potentially adversely affected and give priority to those local forest management corporations that are willing to provide these opportunities to our people. That would not be the first time that Ontario took this approach.

The Ministry of Natural Resources’ current forest biofibre policy directive provides the general direction for the allocation and use of forest biofibre from Ontario’s crown forests and provides a commitment to continue to identify opportunities that may benefit aboriginal people through forestry initiatives that become available with the development and utilization of forest biofibre. If you look at the biofibre policy directive you’ll see that it reads:

“Throughout the allocation process, MNR, in collaboration with the proponents will give priority to pursuing opportunities for aboriginal peoples and communities.

“Where new opportunities to utilize forest biofibre arise through a competitive process, MNR will include evaluation criteria that will give a higher priority to proposals that identify benefits for aboriginal peoples.

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“Proposals from aboriginal communities and from aboriginal partnerships or that provide economic benefits

to aboriginal peoples will receive priority with regard to consideration for access to forest biofibre. The mechanism to address these opportunities will be provided through ongoing local negotiations with the Ministry of Natural Resources and affected aboriginal communities (Condition 34 of Declaration Order MNR-71 regarding MNR's Class Environmental Assessment Approval for Forest Management on Crown Lands in Ontario, as amended)—that reflects that situation.

“Where an opportunity to utilize forest biofibre exists MNR will notify affected aboriginal communities. During the allocation process, where an aboriginal community or proponent indicates there is an interest in utilizing forest biofibre, MNR, in collaboration with the aboriginal community and potential industry proponents will assist in identifying those opportunities and discussing potential benefits to be derived.”

It is our view that if this policy directive was incorporated into and made a part of the new tenure reform and pricing system and included in the act at subsection 23(1), this could provide our member First Nations communities with significant employment and business opportunities and, in the result, accommodate any infringements of the aboriginal treaty rights of the member First Nations of the Anishnabek Nation which are caused by the activities authorized by sustainable forest licences that are going to be issued to new local forest management companies. If the new local forest management companies do not set this out, don't issue the licence to them.

The other outcome and real value in this approach is that Ontario will now be able to point to a real measure in its new tenure reform and pricing system that resulted in “achieving a more equal participation by aboriginal peoples in the benefits provided through forest management planning.”

To conclude, we believe the new tenure reform and pricing framework, as set out by the act, can provide opportunities for achieving more equal participation by aboriginal peoples in the benefits provided through forest management planning if the proposed amendments are adopted. We believe that there exists some real opportunity to achieve more equal participation by aboriginal peoples in the benefits provided through forest management planning through the amendments we are proposing to subsection 21(3) of the act, and that the incorporation of the same biofibre policy directives into the business plan submission requirements for local forest management companies can go a long way towards realizing this objective.

I'm almost out of breath here because I'm rushing for this 10-minute limited time we have, but thank you. I don't know how much more time I have, Mr. Chair. Maybe I've run out.

The Chair (Mr. David Oraziatti): We're actually past the 15 minutes, so if you could just wrap up.

Grand Council Chief Patrick Madahbee: Okay, sorry. Well, I've made my presentation. I have other examples of problems out in our communities, but I'll leave it at that.

The Chair (Mr. David Oraziatti): We appreciate you coming in today. You got a lot in in your presentation. Certainly members of the committee have all of the information now from you, so we appreciate that. Thank you very much; that's time.

DR. SHASHI KANT

The Chair (Mr. David Oraziatti): Our next presentation is Mr. Kant.

Good afternoon, Mr. Kant. Welcome to the Standing Committee on General Government. You have 15 minutes for your presentation, as you know. Any time that you do not use will be divided among committee members for questions. You can state your name and start when you're ready.

Dr. Shashi Kant: Thank you, Chair, and thank you, other members. My name is Shashi Kant. I am a professor at the faculty of forestry at the University of Toronto. That way, I don't have any direct interests in terms of whether I will lose a job or whether I will lose tenure or something. My opinion is more from the perspective of an independent economist.

I am an economist. I work on the forest tenure, timber pricing and the economics of sustainable forest management. I also have received a lot of awards for that, including the award from your Premier and also an award from the Queen.

Recently, I have done a study on the global trends in forest sector and forest tenure reforms, and I presented that study at a number of places. I thought it would be a good place to say some of those results from there.

Based on that study and based on what is in Ontario right now, my opinion is that the current tenure system is outdated and needs to be reformed. It is quite inflexible and it is overcontrolled by the government. It is subject to political pressures, and there are no incentives for innovations. From that point, the reforms are overdue and the more you delay the reforms, it will cost more for every sector: for communities and for industry as well as for the government.

Now what is important in tenure? A basic principle that I think is important is a balance between the regulations, market forces and community interests. If you can balance those forces, I think that will be the optimal tenure system for any area. But it's not an easy task, and what happens most of the time is one of those factors starts dominating. If government regulation starts dominating, then you can say, “What was China before reforms? What was India before reforms? What was the USSR before reforms?” If the market starts dominating, then what happens you have already seen in the last two or three years: If you leave the market totally free, that's the outcome that we have seen in the US and here. If community interests start dominating, then you move towards more of a subsistence economy than a market economy or a developed economy.

Our tenure system was designed in the early 1900s, and most of the features of tenure systems are from that

era where we wanted to promote industrial development in the areas which were poor. We subsidized timber. We subsidized other imports. And it's not just in Canada; it happened all over the world. But I think now we are in a different state, and we have to move away from that to meet the challenges in the world which we have.

The current system is overly regulated—obviously, dominance by the government. In the current reform, what I'm seeing is that there is more of a role for the market that the reform is trying to introduce, which I thought everybody should welcome because we live in a capitalist economy, and we talk about the market. What I'm hearing is a lot of opposition for that.

What I saw in the reforms, the study that I was talking to you about—I have studied the reforms in countries like Australia, New Zealand, Germany, the UK, the USA, China, India, Sudan, Chile, and economies in transition. Obviously, there's no time to go into the details of that study, but I will just give to you the highlights of what happened in those countries. A key question to us, before I go into those details, is whether we want to continue to live in the 20th-century forest tenure system or we want to design a new tenure system which faces the challenges of the 21st century. What I see in this global study which I am talking about is that there are five or six types of tenure reforms which have gone into these different countries globally.

The first one is the change in ownership of forest land, which is definitely not in our context; that is not what we are looking for. But there are examples like TIMOs and REITs in the USA. There are also what is called restitutional forest land in emerging economies or in economies in transition like Bulgaria, Estonia, Slovenia etc. They have given forest land back to the people from whom they have taken the land earlier. I don't think we are talking about that here.

Also, in some countries like the UK and Chile, they have sold smaller-scale plantations. Again, we are not talking about plantations in here, so that is, again, not of much relevance to us, because we don't have many plantations.

Then in some countries like Sweden, they created state-owned agencies, and they gave the forest to that agency—not all the forest, but a good amount of the forest. The state-owned company does everything there.

Then we have what is called—the idea is, if the forest or plantation needs to be a commercial activity, we have to apply commercial principles; we cannot continue not applying commercial principles. So countries like New Zealand, South Africa and Australia started with this idea to first put the commercial principles in the tenure system, then create the corporations and then privatize. It happened for the sale of plantations in New Zealand, like you might have heard; definitely New Zealand is a case. South Africa also sold their plantations, but they didn't sell the forest land. The difference between here and the previous example was transferring the ownership of the land, while in New Zealand, Australia and South Africa, they transferred the ownership of trees, not the land. That

also was a difficult problem. It's not all positive about that.

The most common thing which has happened in many countries and which has happened with the least opposition from most of the sectors, like the forest industry, NGOs and the public, is the creation of business enterprises within state agencies—so not creating a corporation, not creating something which is outside of the state agency. It has happened in the UK, Germany, many provinces in Australia, and many countries and economies in transition.

Bill 151, which you have in front of you, is not, in fact, creating the corporation, even though the name is “corporation”—the local forest management corporations; what they are talking about is local business management entities. If you read the act, it doesn't have all the powers of the corporation; it's an independent business entity which has been proposed here.

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There is another example from China where they have done—complexity of the tenure reforms. I don't want to go into details of those.

Based on what happened globally, I definitely feel there is a need to change our forest tenure in Ontario. What we need more is moving away from the over-regulation by government, introducing more market mechanisms there. That is what I think this bill is trying to do, which is similar to creating the business entities in the many countries which I have listed.

What the proposed reform will do is it will separate the regulatory activities and management and business activities. Right now, everything is done by the government. The idea here is, we separate the business and management activities by creating the corporations and regulation activity. It will also encourage market forces to introduce more economic efficiency. It will discourage wood hoarding because, right now, as you know, in a way, there is hoarding. The owners are not cutting wood, and they are not giving it to anybody. Who in a free society will want that your resources are just kept there and are not available to other people?

Encouraging companies in the allocation of wood by having the entity allows the entry of new and competitive firms. That will allow the entry of all sizes of firms, and these firms will bring new investment to the sector, new job opportunities, new product ideas, diversification of the market and less dependence on the US market.

That is another thing. If you continue in the current system, there is more dependence on the US market. This will reduce that dependence because new products will come, new firms will come, new ideas will come, and they will look for new markets. They will not look at the existing markets only.

Promoting a greater role of market forces in timber pricing also: Right now, our timber pricing is based—some market signals are being used in the residual value approach, but it is of very minimal market importance.

Another one is by having the diversity of forest tenures, there will be competition. Even the people who

have SFLs might like to perform better because they may have a threat that if they don't perform better tomorrow, then maybe this area will also come under the local forest management corporations.

So in the end, what I want to conclude by saying is that there are two key roles of the government in capitalist economies. One is to drive things or to deliver things which cannot be delivered by the market, like health services etc. Another one is to create a regulatory environment in which the market can function independently and efficiently.

What this new bill is trying to do is to move a little bit in that direction. It is not the end of the reforms. I will say it is the beginning of the reforms.

Finally, whenever you do any reform, somebody will always suffer. There are always costs associated with change. If India and China might have thought about those costs at that point in time, they would not have been where they are now—the world leaders.

So there is a trade-off between the present cost and the future cost. There may be at present less cost, and in the future, you get the benefit out of it. Or it may be the other way around: There are more costs in the present, and you don't gain anything in the future. This is the trade-off which you have to decide in the tenure reforms: whether we are looking to the future and want to have more gains in the future than at the cost of the present some costs, or we don't want to incur those costs and don't care about the future. That's where I will stop.

The Chair (Mr. David Oraziotti): Thank you very much for your presentation. We have a brief time here for questions. Mr. Hillier, go ahead.

Mr. Randy Hillier: We've got just a couple of quick questions. There's no doubt that there is a need for some significant improvements in our forestry sector, but listening to your delegation here, you're suggesting this is a good first step or a good step in that direction. We've heard from others about the abrogation of the rule of law in this bill where the minister has the full authority to arbitrarily take away people's use and allocations. Do you think that provides some certainty and some improvements to our forestry?

Dr. Shashi Kant: My answer is that in a democratic country, nobody can behave arbitrarily.

Mr. Randy Hillier: Under this act, you can.

Dr. Shashi Kant: My reading is not that. They can take for certain purposes. It's not arbitrarily without any reason.

Mr. Randy Hillier: There's no criteria established. The minister can seize. That's an abrogation of the rule of law. It certainly doesn't provide much for certainty in the marketplace.

I would also like to have a comment. In this legislation we're looking at creating some new models that have not been tested or tried in our economy. We're not a transitional economy. We're not an emerging economy. They have not been tried in a developed economy. There's no provision whatsoever for any analysis, any review, any reporting to come back to the Legislature to see if this

model actually works in a given period of time. I'd like you to comment on that. As an economist, would you not think it would be important to have an evaluation mechanism when testing out new models?

Dr. Shashi Kant: Two things from this: Testing out any model in the forestry sector would take at least five to 10 years. You cannot test—

Mr. Randy Hillier: Absolutely.

Dr. Shashi Kant: So whether we are willing to wait for another 10 years and not do anything.

The second point is, even where the people have done these business enterprises, it's not in emerging economies. There are many states in Australia; they have been used in the UK and Germany. But, again, there is no empirical evidence whether these models have performed better than what they were doing, because it takes time.

Mr. Randy Hillier: What I was getting at is, here we don't have the mechanism to review or analyze in a given period of time. Economically, that would be just foolish not to have that ability to do so.

The Chair (Mr. David Oraziotti): Okay, Mr. Hillier, I've got to stop you there.

Dr. Shashi Kant: I think if you wait for that—we will not hear anything and we will not do anything because nothing is proved a priori 100% perfect over the other one. It is the learned judgment of the legislators who are making those judgments whether they see it may help us or not.

The Chair (Mr. David Oraziotti): Thank you, Mr. Kant, for coming in today. We appreciate your time today. That's time for your presentation.

Mr. Gilles Bisson: Just a very, very quick question.

The Chair (Mr. David Oraziotti): Mr. Bisson, we're done. Turn the mikes off, please. Thanks, appreciate it.

Interjections.

The Chair (Mr. David Oraziotti): Thanks for coming in.

HEARST AND CONSTANCE LAKE FIRST NATION

MATTICE-VAL CÔTÉ AND SURROUNDING AREAS COMMUNITY-BASED FOREST GROUP

The Chair (Mr. David Oraziotti): We have a video conference. The next presentation is Hearst and Constance Lake First Nations community-based forest management group.

Good afternoon. Can you hear us?

Ms. Desneiges Larose: Yes.

Mr. Roger Sigouin: Yes, sir.

The Chair (Mr. David Oraziotti): Okay, great. Welcome to the Standing Committee on General Government hearings on Bill 151. You have 15 minutes for your presentation. You can start by stating your name and any time that you do not use will be divided among members for questions. So go ahead whenever you're ready.

Mr. Roger Sigouin: Thank you, David. Chief Arthur Moore—is he there?

The Chair (Mr. David Oraziotti): I don't believe so.

Mr. Roger Sigouin: Okay. I'm going to start with my presentation. Thank you, David.

The communities of Hearst, Constance Lake and Mattice-Val Côté have been working collaboratively with local industry for years. We have together developed a community-based forest management model that was shared with the Ministry of Northern Development, Mines and Forestry. We actively participate in all consultations and have organized many of our own. We did all that because forestry and the forests are the heart of who we are and the foundation of our original economy. Changes to tenure will affect our communities and our region deeply, and we take these changes very seriously.

We have been sincere in our effort to work with MNDMF and regret to say that if Bill 151 is what the province wishes to bring forward as tenure modernization, we're not supporting it. Bill 151 proposes the development of local forest management corporations, but fails to provide real details related to how, when and to what extent that number may be implemented. Bill 151 makes no mention of enhanced shareholder SFLs, creating unacceptable uncertainty as to the future of tenure and forestry in our province.

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Our communities developed partnerships with each other, engaged with the local industry and worked with our shareholder SFL, Hearst Forest Management Inc., to open the board to our communities, which it did. By all accounts, we have a relationship that works and we have always had our eyes set on improving those relationships and our success. Bill 151 only causes us to fear what may happen to those relationships, and the experience and knowledge that evolved on this forest.

When the province announced its efforts for forest tenure and pricing modernization, we embraced the announcements and worked ardently with our partners to clearly define our expectations and our hopes for forest tenure. Like my neighbours, I too cannot see the voices of our residents in this bill and must urge you to take the time to work with the communities that will be most affected by this change. Sustainable forest management and sustaining our livelihood in the forestry sector depends on certainty from being able to guarantee wood commitments; meaningful partnerships between communities, First Nations and the local forestry sector; and real legislative support for the flexibility in forest management frameworks that so many communities and stakeholders advocated for.

Nevertheless, though Bill 151 does nothing for our realities, we acknowledge the minister's announcement regarding enhanced shareholder SFLs and encourage the minister to include details in Bill 151 about what such a model may entail. Our communities and local industry desire to voluntarily change to such a structure and further our commitments to this province to modernize our tenure system, improve forest sustainability and economic stability in the north, if only Bill 151 would accommodate us.

The Chair (Mr. David Oraziotti): Thank you very much.

Ms. Desneiges Larose: I'm going to jump right in—sorry.

The Chair (Mr. David Oraziotti): Chief Moore is here as well; he has arrived. I'm not sure how you've divided your presentation, but—

Ms. Desneiges Larose: He should go ahead and speak.

The Chair (Mr. David Oraziotti): Okay. Good afternoon, Chief.

Chief Arthur Moore: Good afternoon.

The Chair (Mr. David Oraziotti): Welcome to the Standing Committee on General Government. Go ahead, if you want to continue with the presentation.

Chief Arthur Moore: Thank you for allowing me to speak. My name is Chief Arthur Moore from Constance Lake First Nation, not very far from the town of Hearst, about half an hour drive. Here's my presentation.

Forest tenure and its modernization is an important issue for all communities of the north, aboriginal and non-aboriginal. Constance Lake First Nation has been an active advocate for community-based forest management models. It has worked with its neighbours, with Matawa First Nations and the province to develop models that would reflect the level of change necessary to ensure sustainable forest management and economic growth for all.

Having been involved in these processes, I can tell you that Bill 151 does not reflect the recommendations that were made throughout the consultation process. There were meetings and open houses, yes, but how can we say the consultation was meaningful or even sufficient if we cannot recognize our voices and aspirations in this bill? If Bill 151 is what is being proposed to the people of Ontario and the First Nations of Ontario as tenure modernization, then it falls short.

The only mention of First Nations' interests in this bill lies under the objects of the LFMCs by providing "for economic development opportunities for aboriginal peoples."

In 1994, the Ontario environmental assessment board's decision on the timber class environmental assessment established term and condition 34, also known as 77, which recognized that aboriginal people require separate and parallel processes to address aboriginal needs and values, and which addressed improvements in the participation of aboriginal peoples in forest management planning, including the requirements for the OMNR to provide more forest-based economic opportunities to aboriginal communities. But today, in 2011, I am asked to comment on a bill that reduces all aboriginal interests to "economic development opportunities," as though 17 years of relationship-building and working with the province to develop measures and ways where aboriginal peoples can be a meaningful part of forest management and tenure in Ontario were erased.

Bill 151 does not address the province's and the ministry's obligations under subsection 35(1) of the Con-

stitution Act, 1982, nor does it take into account case law from our highest court—the Calder case, 1973; Guerin, 1984; Sparrow, 1990; Delgamuukw, 1997; Haida, 2004; and the 2005 Mikisew rulings—which confirmed aboriginal and treaty rights to resource use and gave weight to aboriginal demands to participate as major decision-makers in resource management and, most importantly of all, affirmed the obligatory responsibilities and obligations of provincial governments towards aboriginal and treaty rights and consultation.

We support change in forest tenure and pricing, and we are sincerely dedicated to working with Hearst and area communities as well as the province of Ontario in identifying solutions for the north and for First Nations. However, we cannot support Bill 151 in its current form. With too few details on the alternatives related to enhanced shareholder SFLs or timing and implementation of LFMCS, how can we support this bill? With no indication of how First Nations will be involved or part of decision-making, how can we support this bill? With limited details on how the expanded powers by the minister to cancel or make amendments to supply agreements and SFLs will impact the forestry sector or our own community initiatives, how can we support this bill and the amendments to the CFSA?

As chief of Constance Lake First Nation, I urge you to consider the responsibility you have towards our First Nations and the people of the province; to take the time to meaningfully consult with us; and, most importantly, to take the time to modernize tenure in Ontario in a manner that is consistent with the needs and ambitions of its people and forests. Do not rush what is a monumental change for First Nations and northern communities, for the sake of politics.

Thank you very much. I say meegwetch for allowing me to speak.

The Chair (Mr. David Oraziotti): Thank you very much for both of your presentations. We have a couple of minutes for questions. Mr. Bisson.

Mr. Gilles Bisson: Thank you very much. First, Chief Moore, you're needed at the table.

The Chair (Mr. David Oraziotti): Sorry. Folks in Hearst, did you have some additional information to add?

Ms. Desneiges Larose: I did, but we are kind of running out of time. I think we did offer some written comments to the committee that specifically look at the specific aspects of Bill 151, which presents a lot of issues and is more or less an antithesis to what the communities have been presenting and consistently voicing with the government. To ensure that the committee does have time to ask questions to either myself, Roger, or Arthur, I'll remove myself and perhaps further submit some written comments to the ministry.

The Chair (Mr. David Oraziotti): Okay. We have received that and it has been circulated, so we certainly appreciate your information.

Mr. Bisson, I believe, has a question.

Mr. Gilles Bisson: Ma question, Roger, Desneiges, or my question to you, Chief Moore, is the following: It said

inside this report, "Don't rush this process." Is it your sense that the government is trying to bite off too much too quickly?

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Chief Arthur Moore: I believe so. I think we need more time to review this new legislation. Like I said, there's not enough aboriginal content to allow us that flexibility to manage—

M. Gilles Bisson: Roger, veux-tu commenter sur ce point-là?

M. Roger Sigouin: Je vais laisser Desneiges répondre, et après ça, s'il y a autre chose, je rajouterai.

Ms. Desneiges Larose: Si je peux répondre, what I would have to say to the committee is that tenure modernization is an extremely complex and intricate process, and Bill 151 is not comprehensive enough to represent true tenure modernization. It falls short of allowing the flexibility, the diversity that is needed in tenure models and the variety in order to cater to what is an incredibly large territory. The area of undertaking is extremely massive and to think that one-size-fits-all policies can address the level of complexity in industrial processes and communities' ecology, culture and economics is absolutely ridiculous.

We support and continue to support the initiative to modernize tenure. We do think that this sort of significant change requires real engagement with the community because it's going to take a long time before modernization of tenure takes place again and we want to make sure that it's done properly and in a way that is consistent with the ambitions and especially the needs for this landscape, its people and for sustainability.

M. Gilles Bisson: Roger, voulais-tu additionner?

Mr. Roger Sigouin: Oui, je pense que—yes, I think Desneiges said it pretty well, there. I think she's right. When we have to do something, let's do it the right way and take our time. It's the right way to do it.

Right now, the government said the northern community has to work together with the First Nations and all that, and I agree. That's what we're doing. That's a process that takes time, and I think the province should do the same.

M. Gilles Bisson: Merci beaucoup.

The Chair (Mr. David Oraziotti): Thank you very much for your presentation, and that's time for your presentation. We're done. We appreciate you coming in today, Chief; thank you very much, Roger and Ms. Larose. We appreciate it.

Mr. Roger Sigouin: Thank you, David.

Chief Arthur Moore: Thank you.

Ms. Desneiges Larose: Merci; meegwetch.

EACOM TIMBER CORP.

The Chair (Mr. David Oraziotti): Okay, folks: Next presentation is Mr. Nicks. Is Mr. Nicks here?

Good afternoon, and welcome to the Standing Committee on General Government. As you're aware, you have 15 minutes for your presentation and any time

you don't use will be divided among committee members for questions. You can start by simply stating your name and begin when you're ready.

Mr. Brian Nicks: Mr. Chair, members of the standing committee, thanks for the opportunity to address you today regarding Bill 151. My name is Brian Nicks. I am Eacom Timber Corp.'s director of forestry for Ontario. I'm based in the Sudbury area; Espanola, to be exact.

In this capacity, I would like to describe our company's concerns with Bill 151, the underlying rationale for those concerns and some constructive suggestions for amending the bill so that it encourages rather than deters capital investment in Ontario's forest sector.

By way of introduction, Eacom Timber Corp. is a publicly traded manufacturer of softwood lumber and engineered wood products that acquired the forest products division of Domtar Inc. in June 2010 at a cost of \$125 million Canadian, including working capital. Eacom has interests in six Ontario solid wood mills in communities that should be familiar to you: Timmins, Gogama, Elk Lake, Nairn Centre, Ear Falls and the value-added mill in Sault Ste. Marie, five of which are in full operation. Eacom also manages two single-entity SFLs to very high standards—confirmed in recent independent audits—and partners in the successful management of three co-operative SFLs.

Although originally based in British Columbia, Eacom has decided to invest in Ontario for one simple reason: the potential for a sustained recovery of Ontario's softwood lumber industry, based in large measure on secure, predictable and affordable supplies of committed crown timber. That was the basis of the offer and the transaction.

We can and should believe in the potential of Ontario to become a leading softwood lumber-producing jurisdiction in North America. Our forests are vast, they're sustainably managed, they're independently third party certified and they're strategically located next to north-east US and southern Ontario markets. Investment interests, under the conditions of secure and affordable wood supply, practical public policy and reasonable input costs, does exist.

In this regard, the Ontario government can materially assist by following through on the modified and measured forest tenure reforms that were announced on January 13 by Minister Gravelle in Thunder Bay and, in particular, by ensuring Bill 151 is amended to provide greater certainty of supply to present and future holders of crown timber commitments, licences and supply agreements that consistently utilize their available volume.

To be clear, Eacom Timber Corp. does not support Bill 151 in its current form, and there are three primary reasons: (1) the substantially increased authority of the Lieutenant Governor in Council to cancel licences, commitments and supply agreements, including for unknown or undefined reasons to be subsequently defined by LGIC under regulation; (2) the loss of existing rights of notice and appeal, and explicit denial of legal recourse,

remedies, proceedings or expropriation awards—that is to say, in our view, procedural fairness; and (3) the resulting negative perceptions of Ontario, amongst industry leaders, investors, shareholders, customers and employees—as a secure, stable and predictable jurisdiction in which to invest scarce forestry capital.

Eacom understands that the government's intent is for Bill 151 and the subsequent Ontario Forest Tenure Modernization Act to constitute enabling legislation. Such legislation is, by definition, long on authority and short on detail.

The convenience afforded to government by enabling legislation can, however, represent ambiguity, excessive discretion and uncertainty to affected shareholders, investors and boards of directors. This investor impact, in the case of Bill 151, would surely be inconsistent with one of the bill's key goals of optimizing value from predictable and competitively priced crown forest resources.

Let me, therefore, offer some constructive suggestions on how to allay investor unease and make Bill 151 consistent with the measured and moderate approach to forest tenure reform committed to by the Ontario government last January.

Firstly, Bill 151 should explicitly limit local forest management corporations initially to two pilots. Creation of such LFMC pilots should occur only where major changes are warranted; for example, where SFLs have been cancelled or are surrendered due to non-performance or insolvency. A five-to-seven-year testing period should be required before any new LFMCs are considered. MNDMF staff has recently mused about the development of a new subsection under section 3 of the bill that would prevent the development of new LFMCs prior to a ministerial review of the initial two pilots. An exemption from this clause might be created to allow the first two pilots to proceed. Eacom would be encouraged by this approach, but also calls for the preamble to the act to clearly outline the LFMC development and testing process for greater investor assurance.

Secondly, parameters for cancellation of wood supply agreements, commitments or licences must be refined. The breadth and depth of contemplated ministerial discretion is simply unsupportable, given current challenges in securing private investment capital. We do understand that MNDMF may propose to conduct ministerial reviews prior to cancellations to create additional LFMCs, to amend section 41.1(2)(b) to replace "optimal" with "consistent and sufficient" regarding wood use, and to entirely delete section 41.1(2)(c) authorizing cancellations for any unrelated reason prescribed by future regulations. This would represent some progress, if fully enacted. However, Eacom believes that further defining "consistent and sufficient," in terms of relative use by a given mill within its particular sector, for example—assuming there are multiple mills in that sector—must also be undertaken within a regulation under the CFSA to ensure even application over time and space, and to provide critical business certainty.

Thirdly, section 41.1 of Bill 151 needs to explicitly recognize enhanced co-operative SFLs as a legitimate

tenure reform and a key component of the path forward announced by Minister Gravelle in January. We acknowledge that government may now intend to insert language in Bill 151 recognizing the minister's ability to establish enhanced co-ops. However, we also call for a regulation outlining consistent and objective criteria for independent assessments of both LFMCs and co-operatives, as a critical check and balance before further tenure reforms are implemented by the minister of the day.

Fourth, valid wood supply agreements should be respected. Section 41.1 of the bill contemplates providing the minister with authority to cancel existing, and presumably future, wood supply agreements, and as such, to treat wood supply agreements in the same manner as wood commitments and licences. Eacom believes that wood supply agreements, which represent the strongest legal arrangement between a company and the crown, should only be cancelled or amended under the CFSA for the purpose of establishing LFMCs in accordance with a moderate and measured approach to tenure reform.

All other adjustments to supply agreements should continue to be authorized under the related terms of the agreements in order to maintain investor confidence.

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Fifthly, the confidentiality of timber transaction pricing information gathered for the purpose of informing administered crown stumpage rates must be respected. Such information constitutes sensitive business intelligence. Further, it could potentially place the crown in a conflict-of-interest situation if provided to a crown LFMC marketing wood to a private contributor of pricing information. MNDMF staff seem open to recommending amendment of Bill 151's proposed section 41.2(11) to ensure that any information submitted by companies regarding pricing or transaction information would be confidential and not subject to freedom-of-information requests. We would urge the creation of such an amendment, but we also call for an explicit legal exemption of such sensitive financial information from FIPPA requests, if that's possible.

Finally, Eacom considers the proposed limitations on remedies within section 41.2 of Bill 151 to be inconsistent with legislation designed to optimize value from forest resources. Given the discretion to be afforded to the Lieutenant Governor in Council around commitment, licence and agreement cancellation, an associated lack of recourse and total immunity of the crown in the event of malice, prejudice or error are difficult for us to comprehend. We understand MNDMF may now propose introducing wording into Bill 151 that would require notification of affected parties and provide rights of representation prior to a final decision by the minister, but this merely preserves a current opportunity for forest resource licence holders under section 59(3) of the CFSA, and for supply agreement holders under the terms of their existing agreements. In our view, the explicit rejection in Bill 151 of all other forms of redress and an implied invitation to pursue costly and time-consuming judicial review processes may very well deter, not attract,

new forestry investment, so we would strongly urge the government to reconsider.

In summary, Eacom Timber Corp. is working hard to maintain its operations and jobs in the province of Ontario and is willing to invest here preferentially, but only under the right public policy conditions. Our executive team and our investors see great potential for softwood lumber production over the long term. To realize that future promise, however, we require the active collaboration and support of an Ontario government fully attuned to our own imperative of secure, predictable and affordable long-term wood supply. It truly is the lifeblood of our business. By way of example, two thirds of the input costs in a sawmill are timber. We therefore request this government's support to make the necessary amendments to Bill 151, as outlined here today. Please take the time to consult broadly, listen carefully and get this right.

Thank you for this opportunity to present, and I welcome any questions you may have.

The Chair (Mr. David Oraziatti): Thank you very much for your presentation today. We do have a few minutes for questions. Mr. Brown is up first. Go ahead, Mr. Brown.

Mr. Michael A. Brown: Thank you, Mr. Nicks. We heard today from Domtar, which provided a number of recommendations with which, I gather, you are probably familiar. Are there further recommendations, directly, that we need to take into account as we move forward with the clause-by-clause structure of this bill?

Mr. Brian Nicks: Those are the primary recommendations, Mr. Brown. The recommendation that I've been hearing today and elsewhere around regional consultations from communities, from First Nations peoples—we would support that as well. That's not part of the line-by-line exercise, but as a process exercise, we would support that.

Mr. Michael A. Brown: Obviously, Eacom is a major employer in our part of the north, which represents the Espanola mill, the Nairn Centre mill—well, the Espanola mill is obviously Domtar, but the Eacom mill in Nairn Centre, which not long ago was a Domtar mill, and the others. They're major employers, major players in terms of the economy. I think Domtar is probably the largest employer in the entire constituency. I haven't really figured that out.

Mr. Brian Nicks: I believe so.

Mr. Michael A. Brown: And Eacom is a big part; Tembec in Chapleau is.

The security that you're asking for is a way of securing the jobs of the folks whom I represent. If you get what you ask for, we will not see the 10 million cubic metres of wood not used that's presently happening.

Mr. Brian Nicks: If we get what we asked for, we won't see the 10 million cubic metres used?

Mr. Michael A. Brown: Part of the reason for this was economic necessity. We found that the wood was not being used. We have 10 million cubic metres—

The Chair (Mr. David Oraziatti): We're going to have to wrap it up, Mr. Brown.

Mr. Michael A. Brown: —or thereabouts out there. By providing this certainty, this will help the people of Ontario move forward.

Mr. Brian Nicks: It will provide certainty to our company. I would suggest that the minister has always had the authority to temporarily allocate unutilized timber through overlapping licences, and on some occasions has done that.

The Chair (Mr. David Orazietti): Thanks. Mr. Hillier, go ahead.

Mr. Randy Hillier: Thank you very much, Brian, for showing up. Your comments are not unique. We've been hearing it from quite a number of people. I certainly agree with you. Hopefully, we'll have enough time to get these amendments through. We're on a pretty tight time frame.

But I do want to ask you this question: We've heard these rumours of amendments, but Bill 151, how it sits today as compared to the business climate that you're operating in today—which one would be better?

Mr. Brian Nicks: I guess it depends on who you speak to. If you're speaking—

Mr. Randy Hillier: For yourself.

Mr. Brian Nicks: For our company, for Eacom, we—

Mr. Randy Hillier: The certainty of your business and your ability to grow.

Mr. Brian Nicks: The Crown Forest Sustainability Act, at the time, was somewhat revolutionary, but it's turned out to be good, effective sustainability legislation. We know it; we operate well under it. We've discharged all of our obligations informally when—with Domtar, the same. So we're comfortable with it. Bill 151, through its generality, I would say, introduces a number of unanswered questions, particularly around the rest of the tenure reform approach that was agreed to with government. So it's very silent on a number of very key areas to us.

Mr. Randy Hillier: I'd like to just ask one more thing. Do you think it would be valuable to the forest industry if there was a review mechanism within the legislation so we can analyze and evaluate just how effective this tenure change—what it is accomplishing in, let's say, a five-year period of time and have that analysis and review available to the public through the Legislature so we can actually see if we've gained the improvements we're seeking out?

Mr. Brian Nicks: The short answer is yes, absolutely. That would be consistent with MNR/MNDMF's approach to other forest policy. It's called adaptive management, and it relies on a feedback loop. We've suggested five to seven years be the test period, with an objective independent evaluation of LFCs against all other tenure models before any decision is made to move forward with more LFCs. So I completely agree.

Mr. Randy Hillier: Thank you very much.

The Chair (Mr. David Orazietti): Thank you very much. That's time for your presentation. We appreciate you coming in today.

Mr. Brian Nicks: You're welcome.

MIITIGOOG GENERAL PARTNER INC.

MIISUN INTEGRATED RESOURCE
MANAGEMENT INC.

The Chair (Mr. David Orazietti): The next presentation, Miitigoog limited partnership.

Mr. Gilles Bisson: On a point of order, Mr. Chair.

The Chair (Mr. David Orazietti): Sure.

Mr. Gilles Bisson: Listen, according to the committee decision of the majority, we're going to have to put forward our amendments by Friday. It's pretty darned clear there's a fair amount of thinking that's got to go into amendments on this bill, and I would move a motion—if not dealt with today, but it would have to be dealt with today—that we extend the deadline for amendments because, quite frankly, we're not going to be able to do it by Friday. There's just way too much.

The Chair (Mr. David Orazietti): I appreciate you raising that issue. We have the subcommittee information. We can come back to that at the end of committee. We've got some scheduled presentations.

Mr. Gilles Bisson: Okay. Thank you.

The Chair (Mr. David Orazietti): Let's accommodate the folks who are here first and we can raise that later, if you're interested in doing that.

Mr. Gilles Bisson: Okay.

Mr. Randy Hillier: I agree.

The Chair (Mr. David Orazietti): Good afternoon, and welcome to the Standing Committee on General Government. As you're aware, you have 15 minutes for your presentation. Any time that you don't use will be divided among committee members to ask questions. You can simply start by stating your name and when you're ready, you can start your presentation. Thank you.

Chief Lorraine Cobiness: Chief Lorraine Cobiness, Ochiichagwe'Babigo'Ining Ojibway Nation, Anishinaabe Grand Council of Treaty 3.

Chief Eric Fisher: Chief Eric Fisher, Wabaseemoong, within the Kenora SFL.

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Chief Warren White: Bonjour. Meegwetch.

Remarks in Ojibway.

I'm Chief Warren White, of Naotkamegwaning First Nation. Purple Cloud is my native-language name, and my clan is the Lynx clan. I'm from Treaty 3.

Mr. Gilles Bisson: Lynx?

Chief Warren White: Yes.

Chief Lorraine Cobiness: I'd like to start off by saying thank you for this opportunity to speak to the standing committee on Bill 151. There's a typo; we actually just see that—

Mr. Gilles Bisson: It's 155.

Chief Lorraine Cobiness: Well, create a new one. How about that? Create a new bill.

Good afternoon, members of the standing committee. I'm pleased to be here today to make a presentation to you on behalf of Miitigoog General Partner Inc.; my fellow chiefs—Chief Fisher and Chief White—whose communities are active shareholders within this company

and the management company of Miisun Integrated Resource Management; our industry partners; and my community, Ochiichagwe'Babigo'Ining, located within the Kenora forest in northwestern Ontario, Grand Council of Treaty 3 territory.

First, I'd like to take a minute and educate you on the landmark partnership that was formed between First Nations and the forest industry. These two often divergent groups have come together to form a 50-50 partnership to hold and manage the Kenora sustainable forest licence.

The partners in the company are currently Wabaseemoong Independent Nation, Ochiichagwe'Babigo'Ining, Naotkamegwaning, Weyerhaeuser Co., Kenora Forest Products, Wincrief Forestry Products, and a number of smaller, independent sawmills and independent operators. There are eight directors on the board: four First Nation and four industry. The board also has an independent chair. All members collectively work together for the betterment of the company, which is entering into its second year of operations. We are pleased to state that all day-to-day management responsibilities have now fully transferred to a 100% First-Nation-owned management company, which I'm part of: Miisun Integrated Resource Management.

Earlier, I used the word "currently" referring to the company's partners. I used this word as the company has been designed to be able to change, both expand and contract, based on new industry and First Nations interests. Board composition is designed to always be balanced with First Nations and industry members. This company, through the shareholders agreement, deals with virtually all of the government goals in tenure reform. The company is also willing to work with government to make the necessary changes to meet the outstanding goal of timber pricing reform.

I'd like now to turn my focus to Bill 151. It is our understanding that Bill 151 was necessary for the government to move forward with their forest tenure and pricing reform initiatives. The January 13 announcements in Thunder Bay and other public statements spoke to a modified approach which included two pilot local forest management corporations, LFMCs, and several enhanced co-operatives. However, the bill does not mention enhanced co-operatives nor does it propose any limits to the number or scope or even an evaluation of these LFMCs.

We understand that the government is supportive of adding reference to enabling enhanced co-ops to be set up. This will enable enhanced co-ops, with some minor tweaking, to continue meeting all of the goals of the desired tenure and pricing modernization process.

You must understand that the co-operative licences that are on the landscape today, like Miitigoog, have been designed to address the local needs in this very diverse province. They are there, and they are working.

We also understand that government supports adding the requirement of a review of LFMCs prior to their expansion past the original two pilots. This proposed change is absolutely necessary, as expanding an un-

proven tenure system without a formal review would be irresponsible.

Criteria need to be established well in advance of the review to ensure that it undergoes a complete and unbiased review without a predetermined outcome. We encourage government to use both First Nations and the forest industry to help set these criteria and to fully participate in the reviews. The criteria and timelines for the review should be adopted into regulation to ensure they stand the test of time and remain unbiased.

Chief Warren White: One of the key criteria for evaluation should be the financial stability of the tenure model. It is our understanding that the LFMC model will be able to redirect base stumpage into the company. While this ability seems to be linked to LFMCs being crown corporations, we encourage the government to be flexible and enable both models and equal opportunity in this regard.

An area of great concern in the proposed legislation is the introduction of full immunity of government with regards to any decisions and their ability to cancel and remove licenses or supply agreements without cause or representation, appeal or remedy. Our partners and our communities have significant investments in the forest industry and the introduction of these clauses creates significant uncertainty and is fundamentally wrong. How can we convince our shareholders, who are our community members, and our partners and their shareholders, that investing and moving forward in the forest industry is a good investment when such uncertainty is being created, when the business could be taken away without representation, appeal or compensation? There needs to be clear conditions for any changes to the licenses or agreements for all concerned. If bad decisions are made, then people need to be accountable for them. While there now appears to be some support from government in enabling representation after license removals, this needs to take place before cancellations. We need to ensure that there are fair and equitable processes in place to incent investment. We fully agree that the forest must be fully and sustainably utilized. However, investment certainty must also be in place to enable this to happen in a stable fashion. Investment certainty will bring about a healthy industry with good, stable employment, which so many of our communities and this province need.

We firmly believe that being forced to move to an LFMC in the Kenora area would be a step backwards from the unique partnership model that has been implemented with First Nations and industry in the Kenora area. This enhanced cooperative model was supported throughout the development and transfer stages by the McGuinty government. First Nations have struggled to get on an even playing field in this province in years past. Now, in an area where we have entered into a landmark agreement with industry to do this, it would be all taken away. Representation for First Nations on the board of a crown corporation does not provide the meaningful participation and ownership that we have in our current model.

In conclusion, we request that you follow through with the amendments to the bill, as requested, to ensure that the forest tenure system within Ontario continues to attract and maintain the investment and business development opportunities that are so key to First Nations, the forestry industry and the province's success.

I guess one of the other things I would like to caution and have a concern on is that there are many forest management units within northern Ontario's Treaty 3 territory. Our goal and vision is to amalgamate these forest management units within Miitigoog and Miisun in the future. But with this model, we believe that our governance structure would change. I just wanted to add that. Also, 20% of the forest in Ontario and the productive wood comes out of our Kenora SFLs and Whiskey Jack and all those SFLs that we have in Treaty 3. With that, I just wanted to add that, and say meegwetch for listening to me. Meegwetch.

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The Chair (Mr. David Oraziatti): Thank you very much. We appreciate you coming in today and certainly appreciate your presentation. We have a couple of minutes for questions. Mr. Bisson is up first.

Mr. Gilles Bisson: Let me get to the nub of what you raised at the end. First of all, congratulations on a very long process of negotiations. I'm well aware of how difficult that was. But nonetheless, it was done under the current regime, which indicates that, in fact, we can do some of the stuff we purport to do in this legislation already—but that's a whole other thing.

You say in your statement, "Now, in an area where we have entered into a landmark agreement with industry to do this, it could all be taken away." Can you explain that so people understand clearly what the dangers are with the way the legislation is currently worded?

Chief Eric Fisher: I'll speak on that. The partnership is a unique partnership with industry, where the First Nations have opportunity to actually participate in the forest, with starting forest companies, and also to be a supplier. One of the problems and the concern we have is the power that the minister would have to take that licence away.

The process that we went through—this didn't happen overnight; it took two and a half years of sitting down with industry and First Nations and agreeing on how we could share the forest without having any roadblocks or conflicts with First Nations. So, the trust was built. The fear we have in our area is the powers that the minister would have by removing the licences away from the operators.

Mr. Gilles Bisson: So—

The Chair (Mr. David Oraziatti): Very briefly, Mr. Bisson.

Mr. Gilles Bisson: The other thing is, does there need to be some sort of a clause inserted in this legislation that protects the rights under the court challenges in regard to the duty to consult and accommodate? Should that be inserted in this legislation?

Chief Warren White: I guess that's a question for the Grand Council of Treaty 3.

Mr. Gilles Bisson: Okay, thank you.

The Chair (Mr. David Oraziatti): Thank you very much, Chief Cobiness, Chief Fisher and Chief White, for coming in today. We really appreciate your time. That's time for your presentation.

ABITIBIBOWATER

The Chair (Mr. David Oraziatti): Our next presentation is AbitibiBowater: Mr. Barber.

Good afternoon. Welcome to the Standing Committee on General Government. As you've been watching, you're aware: You have 15 minutes, and time you leave will be divided. You can start by simply stating your name and start your presentation when you're ready.

Mr. Roger Barber: Thanks very much. Good afternoon, everyone. My name is Roger Barber, and I'm the general manager of forestry and fibre resources for AbitibiBowater in Ontario and Atlantic Canada. In that capacity, I'm responsible for all forestry activities, fibre procurement and long-term fibre strategy within the jurisdictions of Ontario and Atlantic Canada.

As some of you may know, AbitibiBowater recently underwent a fairly comprehensive restructuring process under CCAA and Chapter 11 proceedings in both Canada and the United States respectively. This has resulted in a rationalized but much more competitive manufacturing platform across our company. Our Ontario mills continued to operate through the restructuring process, and ultimately, all of our mills that were operating when we went into these protections were operating when we came out of the creditor protection.

We're currently the largest forest products producer in the province. We directly employ about 2,700 people in our Ontario mills and woodlands operations. We also employ approximately 8,000 other people through our harvesting contractors, support systems, suppliers and the like. We manufacture a variety of forest products in the province, including hardwood and softwood kraft pulp, newsprint and specialty papers, as well as softwood lumber and energy. We manufacture all of those things in Ontario.

We sell about 50% of our products in North America, and we also sell in more than 70 other countries around the world.

For continued and future success, our operations need a few fairly simple but very important things. We need a competitive environment in which to operate our mills and related operations. This includes many things that are in our control, such as labour costs and operating efficiencies, as well as other things that may be specific to a particular jurisdiction that we operate in, such as energy costs, regulatory systems, taxation regimes and so on.

We also need as much certainty as possible for those inputs to our business where we can have certainty. This is really important as a counterbalance to those uncontrollable factors that we deal with, such as market fluctuations, currency imbalances, fuel pricing etc.

Finally, we need to be able to attract investment to keep our facilities competitive and to take advantage of

emerging opportunities, and we believe there are many in the forest products sector today.

I think it's important to note that the tenure system in Ontario played little or no role in the difficulties encountered by our company over the last number of years and, in our opinion, was a minimal factor in the general downturn of the forest products industry in Ontario. The industry's problems were related to markets, currency and cost competitiveness, specifically including things like energy, labour and raw material costs. However, tenure arrangements in Ontario, including the commitment of fibre through licences and supply agreements, really were viewed by us as a competitive advantage to the system in Ontario. They really didn't relate to the difficulties we encountered over the last number of years.

At the same time, we recognize that there are some other objectives that the government wishes to achieve through tenure reform. Given the importance of a committed, cost-effective fibre supply to our company, we became very engaged in the tenure discussions over the last 18 months or so. Throughout this process, we've tried to recognize the government's desire for change, while at the same time trying to ensure that our needs for business were well understood. That's what I'm trying to do today: make sure that you understand what our key needs are for business.

Although the debate over the initial tenure proposal got heated, we believed that the government had listened, had really heard the concerns of all interested parties and had ended up with a workable path forward, which was supported by our company when the minister announced his plans in January of this year. In particular, we supported the idea that the primary tenure change would be a conversion over time from single-entity sustainable forest licenses, or SFLs, to enhanced multi-party shareholder SFLs, which have already proven to be quite effective in a number of areas in the province where they're already in place. You heard the previous speaker talk about the unique shareholder SFL arrangement they have in the Kenora area.

In addition, we understood that there would be up to two crown corporations, to be known as local forest management corporations, or LFMCS, created and tested over a business cycle against other forms of tenure in the province. It was well understood that enabling legislation would be required to create these two LFMCS.

Unfortunately, Bill 151, the legislation that was tabled some weeks ago, raised some significant concerns for our company and for others in the industry.

The main areas of concern for our company were, firstly, the lack of specificity regarding the understanding that LFMCS would be limited to a maximum of two pilots, and that there would not be any additional LFMCS for a period of five to seven years to allow for an objective evaluation to be completed through a full business cycle, which Dr. Kant spoke to a little bit earlier—that you really need a period of five to 10 years to test a system like this to see if it's effective or not. The bill currently provides for the creation of an unlimited

number of LFMCS with no restriction on the time frame for implementation.

Secondly, Bill 151 introduced new and significant powers for the minister to cancel wood supply agreements and commitments for almost any reason, without rights of representation and with full immunity provisions for government. Whether or not these powers are ever acted upon, the fact that a fibre commitment could be cancelled at any time without recourse could ultimately be the determining factor when investment decisions are being made.

Finally, in its current form, the bill also provides for collection of timber sales and pricing information with no provision for confidentiality. Although we acknowledge that collection of this information will be important to help develop market pricing indicators, if it is not independently and confidentially collected, it raises serious issues of competition.

These are significant areas of concern for us because they do not reflect what we understood to be the tenure plan as described to us in January, and because the new ministerial powers for commitment cancellation represent a significant loss in security and certainty of our fibre supply. This in turn could negatively impact future investment decisions in Ontario.

Based on recent indications from government, it appears that several of our concerns are at least being considered and may provide a basis for amendments. We understand the government is considering changes to the bill which would attempt to clarify to some degree what would constitute non-use of fibre, and to possibly introduce a notice and right of representation into the legislation should a non-use of fibre ultimately result in a commitment cancellation.

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We also understand that amendments are being considered which would require an evaluation of the initial two LFMCS before any more of these crown entities could be created. In addition, we also understand that confidentiality provisions are being considered for the collection of sensitive timber pricing information under the bill.

These are all positive developments that could make Bill 151 less problematic for our company. However, there are a couple of other areas that we would recommend government consider amending. These will be familiar because you will have heard them earlier from other presenters.

Firstly, we would suggest that the intention of government regarding LFMCS, as communicated back in January, be captured in the bill so that future decisions related to these entities are guided by the intentions of those who drafted the legislation. We would suggest that this could be done in the preamble to the bill, and should include the intention to limit LFMCS initially to two; that they would be independently evaluated over five to seven years based on objective criteria; and to clarify what these criteria would be.

Secondly, we would suggest that the immunity provisions that are provided for in Bill 151 are too broad. Even

if the bill is amended to provide for a notice and right of representation if a wood supply commitment is to be cancelled, with total immunity provided for in the act, the only recourse in the event of a licence cancellation would be judicial review. The judicial review process is long and costly, and would be further complicated by the lack of clarity currently in the bill regarding what would constitute non-use of fibre. In other words, the judicial review would have to interpret what the minister's intentions were, given the vagueness of the current wording in the bill.

We remain hopeful that Bill 151, should it ultimately be passed into legislation, will include the amendments that we understand are already under consideration, as well as those additional areas that I have just outlined for you and that you have heard about from others earlier today.

Tenure can be a competitive advantage, or it can be a source of business uncertainty. When business is not sure of key inputs, like access to fibre, investment opportunities are lost. This is not a scenario we wish to see play out in Ontario.

Thanks very much for the opportunity to speak with you today.

The Acting Chair (Mr. Dave Levac): Thank you very much, Mr. Barber. You've left a couple of minutes, and we will start the rotation with Mr. Brown, approximately one and a half minutes each.

Mr. Michael A. Brown: Thank you, Mr. Barber. I appreciate your comments.

As you have been here, I've noticed, for most of the afternoon, if not all, you've heard the presentations made by some of the other major mills and forest companies in Ontario.

You would be supportive of this bill provided that the government move forward on some of the concerns you've raised in your brief?

Mr. Roger Barber: We would support the bill if the recommendations that I've made and that others in the industry have made here today, including some of the things that we understand aren't being considered right now, such as clarification in the preamble regarding the intent of the bill and definitions around LFMCS, the period of time they'd be evaluated etc., as well as rectifying our very serious concern over the immunity provisions for licence cancellation—right now, the only party that has recourse is the government. It maintains full recourse for any failure on the part of the licence holder, but that is not reciprocated, and that's not appropriate, in our opinion.

The Chair (Mr. David Oraziotti): Thank you, Mr. Brown. Mr. Clark.

Mr. Steve Clark: Thank you very much, Mr. Barber, for your presentation.

I guess the whole problem with this bill is, we talk about the intent of the January announcement and then the bill as it's presently worded. And then we have the proposed amendments that—some people have been shared the information and some haven't—and then we have the bill as it's presently worded.

I guess, forgetting about what has been whispered around in certain boardrooms, based on Bill 151, the way it's printed today, how is that better or worse in your business than the present system?

Mr. Roger Barber: The present system looks after us right now. We're not concerned with the present system. We also believe that the enhanced shareholder models can be created under the present system. This bill really is designed to enable the creation of LFMCS. That was the reason that this bill was supposed to come forward. However, it doesn't reflect what we understood those LFMCS to be and goes much beyond what we think is required in order to do that.

The Chair (Mr. David Oraziotti): Thank you very much. Mr. Bisson, anything further to add?

Mr. Gilles Bisson: I'll save my time for my next—

The Chair (Mr. David Oraziotti): Okay. Thank you very much for coming in today. I appreciate it.

Mr. Roger Barber: Thanks very much.

ONTARIO FOREST INDUSTRIES ASSOCIATION

The Chair (Mr. David Oraziotti): Okay, folks, our final presentation today is the Ontario Forest Industries Association. Ms. Lim, good afternoon.

Ms. Jamie Lim: Good afternoon, David. How are you?

The Chair (Mr. David Oraziotti): I'm good.

Ms. Jamie Lim: Good.

The Chair (Mr. David Oraziotti): I know you've been listening to all of the presentations over the last several days.

Mr. Randy Hillier: A point of order, Mr. Chair.

The Chair (Mr. David Oraziotti): Mr. Hillier.

Mr. Randy Hillier: I'd like to take a moment to congratulate the OFIA on kick-starting the forestry industry with this lengthy paper presentation that you've delivered today.

Ms. Jamie Lim: It is all about paper, and you need to always remember that. And it's recyclable, so I expect all of you, when you're done with it, to throw it in the blue box and we'll use it again someday.

The Chair (Mr. David Oraziotti): Okay. You have 15 minutes. Go ahead.

Ms. Jamie Lim: Good afternoon. My name is Jamie Lim and I'm president of the Ontario Forest Industries Association. Joining me today is Scott Jackson, OFIA's manager of forest policy.

This committee has heard from many individual companies during its two days of hearings. I believe it is critical for the committee to recognize that OFIA represents 27 companies. Our members represent a cross-section of the sector, from the large multinational companies to the small multi-generational family-owned and operated companies. We do not look at Bill 151 or any other regulatory mechanism with an eye to assessing how it impacts any one company; we look at all public policy

with the purpose of doing what is in the best interest of the forest sector as a whole.

First, a comment on process: We share the concern of our municipal and business stakeholders and believe that hearings should have been held in northern and rural Ontario. We believe the government should be taking advice on Bill 151 from those in the province who have survived this great recession, kept their mills open and still support, directly and indirectly, 200,000 hard-working families here in Ontario, instead of asking individuals who have nothing to lose, nothing invested, no employees to look in the eye and tell them, "You don't have a job anymore."

On Monday, for a few of the presenters who have no skin in the game and see this as an academic exercise, it seemed easy for them to say that Bill 151 is good as is and should move forward quickly. But I can tell you that those family companies and multinationals that you've heard from that have supported this province and its citizens for over a century depend on government legislation that allows them to continue to invest with confidence, and Bill 151 does not.

With regard to the content of Bill 151, let us be blunt: This bill will create uncertainty as presently written. It will reduce investor confidence and jeopardize the recovery of our sector. Among other things, this bill proposes to provide the minister with arbitrary authority to cancel existing wood supply agreements, commitments and licences, an action that was described on Monday as removing the rule of law.

As outlined in an email from one of our family-run member companies in Mr. Brown's neck of the woods, "Without supply agreements, I cannot run the 'value-added' programs government is so much in support of or invest in my company. I get auction flyers every week from little mom-and-pop mills on the US side that have gone out of business due to the fact that the mill is antiquated because there is an intermittent wood supply and people are scared to invest."

The committee has heard of the ongoing discussions around amendments through an industry-and-government-led working group, and you heard a lot of talk around government's proposed amendments. I'd like to clarify a couple of things. OFIA members make up the majority of the industry representatives on that working group, and while there have been discussions, government has provided nothing formal in writing to industry or other stakeholders. We are reminded of the verbal commitments made by the minister on January 13, none of which actually made it into Bill 151.

1750

As such, OFIA recommends that third reading be delayed until the government shares an amended Bill 151 which reflects the concerns of the forest sector and northern and rural municipalities. Until the committee consults on the amended bill in northern and rural Ontario, OFIA adds its voice to the overwhelming majority of presenters who have stated that this process should be slowed down.

On Monday, MNDMF's opening statement that the economic downturn experienced by Ontario's forest sector would have been averted if a different tenure system had been in place was not only insensitive to the tens of thousands of hard-working Ontarians who have lost their jobs, it was simply incorrect. In fact, during a presentation at the OPFA's annual meeting in 2009, where the Ontario government first announced its intentions to reform tenure, an assistant deputy minister from BC, a province that had recently implemented tenure reform and open-market sales, warned the audience in Sudbury that BC's 2006 tenure reform did not shield BC from job losses and mill closures.

You've heard in great detail from OFIA's members regarding their concerns and the amendments required in order for government to obtain support on this bill. OFIA supports our members' positions and, as such, I will not repeat their recommendations other than to stress that not one industry representative has said that they want the status quo. The change offered in Bill 151 will be detrimental to our sector and goes far beyond a measured approach.

Instead, I would like to take a few minutes to underscore the importance of our sector, the opportunities that are in front of us and, ultimately, what is at stake if government rushes Bill 151 and gets it wrong.

Ontario's forest sector is the cornerstone of the new local, green economy. Why? It's simple: Because we are a renewable natural resource. It's not just what we presently are that defines our sector; it is what we can be. Ontario's forest sector has a wealth of opportunities on which it can capitalize: new consumer and building trends, expanding markets, and the expansion of current markets for traditional and new products. Ontario currently consumes more wood products than it produces. This in itself represents an opportunity.

We are also witnessing a growing trend in consumer demand for local products, a trend that has not gone unnoticed by Ontario developers. In 2009, Marshall Homes unveiled their Ontario home in Oshawa, built using all-Ontario wood. The GTA home builders purchase about \$800 million of lumber annually to frame wood homes and, of that, it's estimated that 70% comes from outside of Ontario. That, ladies and gentlemen, is a \$500-million opportunity waiting for us.

We are also witnessing a growing trend of wood promotion in building codes. Anticipated changes to Ontario's building code will allow the construction, with wood, of commercial buildings to six storeys, creating a much-needed critical mid-rise construction market for Ontario wood products right here in our own backyard.

With regard to expanding markets in the United States, this month's Canadian Business states: "US demand is also expected to soar over the next few years. Before the financial crisis, there were two million housing starts per year; now there are just 500,000. As the economy recovers, more houses will be built, and demand for lumber will rise. It may not return to 2006 levels, but even one million housing starts would put serious pressure on supply."

Consensus forecasts suggest one million housing starts by 2012.

Recently, a Pöyry report, of which you all have the abbreviated version, identified US opportunities for Ontario wood products. It concluded that demand forecasts point to a healthy recovery across the softwood lumber, oriented strandboard and engineered wood product market segments; and there are still opportunities for strong players in niche markets for hardwood lumber, hardwood plywood, hardwood veneer, and posts and poles market segments.

Globally, at the same time that demand grows stronger for wood in the US, more west coast lumber is heading to China and Japan, which in turn opens up US markets for other parts of Canada—namely us.

During the second reading of Bill 151, government stressed it was needed to continue to build our “new forest economy based on new products, new markets and new processes.”

Bill 151 should not be about picking between traditional and new. Bill 151 succeeds only when it is amended to support existing forestry operations with their in-demand traditional products and builds on this primary foundation.

As stated by the FPAC: “The most promising future involves sawmills and engineered wood product plants mixed with biorefineries which produce a range of bio products.... Traditional forest products tend to generate far higher employment multipliers.”

Bill 151 needs to be about keeping the jobs we have and building on those, not tearing them down. Bill 151 has to slow down. There are too many jobs in northern and rural Ontario at stake. Let's work to maximize the full potential of this great, renewable resource.

Ladies and gentlemen, I've provided you with our pre-budget submission. The mid-rise opportunity is the last three pages. I would encourage you to check that out. It's huge; it's significant for Ontario.

Also, I've given you what you've been referring to as the Secret Squirrel document all during your hearings. OFIA and its member companies put this together. We worked constructively with government, as we always do. We have these amendments. We spent two weeks on them. We had a lawyer review them, and then we worked with the government on them.

Then, as well, you have the abbreviated version of the Pöyry report that is just hot off the press. That just came out yesterday. It's a huge opportunity for us. This concern of this 10 million cubic metres of industrial wood fibre that has gone unused over the last four years has less to do with tenure and more to do with the market. I think we should all take comfort in the Pöyry report and in these opportunities that I've told you about today because, ladies and gentlemen, the 26 million cubic metres of industrial sustainable fibre that Ontario has won't be enough in the next couple of years, with the opportunities that are at our doorstep. We will maximize it.

The Chair (Mr. David Oraziotti): Thank you very much for your presentation—

Ms. Jamie Lim: Thank you, David. Under 10 minutes, I may add.

The Chair (Mr. David Oraziotti): You did a great job getting that in. It's not quite under 10 minutes, but we've got a couple of minutes for questions—not very much. Mr. Hillier, you're up.

Mr. Randy Hillier: Thank you, Jamie. I'd like to ask one question, and that is, would you ask the government here today for a commitment that they bring this bill out to northern and rural Ontario and hear what rural and northern Ontario has to say about this bill when it does get amended next week? Would you ask them that and get their commitment?

Ms. Jamie Lim: I think Mr. Brown has been hitting on it all through the two days of hearings. He's been asking different folks who have presented: “If some amendments are made to this bill, will you support it?”

I think that that's the key: some amendments. I think all the industry, the mayors, the business stakeholders and the First Nation presenters that have been here over the last two days need to see the amendments, because—

Mr. Randy Hillier: Before we get to third reading.

Ms. Jamie Lim: If government chooses amendment A, B and C, and industry needs three others, then how can the support be there?

I think, as was said by the last First Nations group that presented, there's a lot at stake here, and we want to get it right. We've been working on this now for almost 12 months—in some cases, two years. Why rush it? We're so close to getting it right, but getting it wrong really precludes some of these wonderful opportunities that are sitting at our doorstep.

I come from a community that watched Xstrata just pick up and leave. That's what companies do. It doesn't matter whether you're a big, international company or whether you're a small, family-run company; when you can't make things work at the end of the month, you close up shop, you pack up and you go away. We don't want that to happen; none of us do. I think that this is critical.

I think that your standing committee and government should come forward with what amendments they're prepared to make to Bill 151, and they should share those with all stakeholders in consultation in people's communities across this province. How many communities do we have? Is it 256?

1800

Mr. Scott Jackson: It's 260 communities.

Ms. Jamie Lim: There are 260 communities that rely on this sector. I think we'd like to catch a few—

The Chair (Mr. David Oraziotti): I'm just going to stop you there for a minute. Mr. Bisson has a question. Go ahead.

Mr. Gilles Bisson: Actually, it's perfect, because you've probably answered three of my questions in that.

Let me just say this and get to the question—let me just get to the question, period: Why is the government in such a rush to pass this thing now? It seems to me that what I'm hearing from a whole bunch of people who are

presenting is, there's general support to make some changes, but this is not the right fix. Why is the government intent on doing this?

The second question is, why do you think they didn't want to travel to northern Ontario?

Ms. Jamie Lim: To the first question—why the rush?—I don't know. I will tell you, on January 13, we were really positive. We thought that we had come to an agreement and that Bill 151 would be about establishing up to two LFCs in the province of Ontario. We truly believed that that's what it was about, not about removing the rule of law.

I think that government needs to get back on the page that we were on in January, because we supported that page. We have no problem with two pilots being set up and being tested over the next five to seven years. We think that's a brilliant path forward, and we certainly support it. But I don't know.

Why didn't they go to northern Ontario? You've got to ask them. Obviously, you've heard from the mayors that have spoken. They all welcomed them. They wanted to have these hearings in their hometowns with the people that are most affected.

I would encourage the government to bring forward the amendment package that they're prepared to make to this bill and share it with everyone, because I think that that's the best path forward for all of us.

The Chair (Mr. David Oraziotti): That's time. We appreciate you coming in today and we appreciate your comments.

Mr. Gilles Bisson: On a point of order, Mr. Chair: I just wanted to—

The Chair (Mr. David Oraziotti): Just before we adjourn, Mr. Bisson—and we can do that right now—

Mr. Gilles Bisson: I just wanted to get the point of order in prior to you hitting the gavel. We're now going to be expected to go back and look at all of these submissions and come up with our amendments. There's no way that can be done by Friday.

I'm asking two things. My preference would be that we push off the clause-by-clause beyond Monday. If the committee is not prepared to do that by way of majority of this committee, we should, at the very least, extend the administrative deadline for the submission of amendments to Monday at 12, because there's no way we're going to have this done by Friday.

The Chair (Mr. David Oraziotti): A couple of things: First of all, the advantage of having the amendments in by Friday, obviously, is for all parties so that they can take a look at those amendments and have a better understanding of them.

What you're raising right now is not a point of order, but since we're having this discussion around the deadline for amendments, if it's agreeable to everyone—it is a soft deadline, an administrative deadline of 5 o'clock on Friday. The advantage, obviously, as I've just said, is so

that all committee members have an opportunity to review those amendments earlier, and there's some co-ordination to it. Can we say 10 o'clock Monday morning for—

Mr. Randy Hillier: Chair, I'd—

The Chair (Mr. David Oraziotti): Sorry, I'm not finished, Mr. Hillier.

Can we say 10 o'clock Monday morning for amendments? That would give the clerk enough time to get them packaged up and get them out to members, and that would address your issue. Is that fair? That would give people the weekend to get those amendments in.

Mr. Gilles Bisson: It would certainly be easier, but I'm still saying that we can't get this done properly in time for next week. This whole process is way too rushed to try to get it right, and I think what we heard is that people are saying, "Put the brakes on, here."

Listen, if that's a little victory, I'll take the little victory of 10 o'clock.

Mr. Randy Hillier: Chair, on a point of order: I'd like to move a motion that clause-by-clause be moved to Wednesday of next week, in order to give everybody in this committee time to put together proper amendments. We know that this was a failure when we went back to that meeting where the northern trips were cancelled, where the schedule was all compressed—

Interjections.

Mr. Randy Hillier: The motion is that we move this clause-by-clause to Wednesday of next week instead of Monday.

The Chair (Mr. David Oraziotti): The subcommittee report already has the information in it that requires the timelines.

Mr. Randy Hillier: We can still make a motion that is votable.

The Chair (Mr. David Oraziotti): Do you want to amend the subcommittee report?

Mr. Randy Hillier: Yes; I want to move a motion that the clause-by-clause be put over until Wednesday of next week.

The Chair (Mr. David Oraziotti): Okay. We'll put the question for a vote then.

Mr. Randy Hillier: Recorded vote, please.

Ayes

Bisson, Clark, Hillier.

Nays

Brown, Kular, Levac, Mangat, Moridi.

The Chair (Mr. David Oraziotti): The motion is lost. We're adjourned.

The committee adjourned at 1805.

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Modernization Act, 2011

Comité permanent des affaires gouvernementales

Loi de 2011 sur la modernisation
du régime de tenure forestière
en Ontario

Chair: David Oraziotti
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENT

Monday 18 April 2011

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Lundi 18 avril 2011

*The committee met at 1401 in room 151.*ONTARIO FOREST TENURE
MODERNIZATION ACT, 2011LOI DE 2011 SUR LA MODERNISATION
DU RÉGIME DE TENURE FORESTIÈRE
EN ONTARIO

Consideration of Bill 151, An Act to enact the Ontario Forest Tenure Modernization Act, 2011 and to amend the Crown Forest Sustainability Act, 1994 / Projet de loi 151, Loi édictant la Loi de 2011 sur la modernisation du régime de tenure forestière en Ontario et modifiant la Loi de 1994 sur la durabilité des forêts de la Couronne.

The Chair (Mr. David Orazietti): Good afternoon, everyone. We're going to get started. Welcome to the Standing Committee on General Government. This is our time for clause-by-clause hearings. Members should have a package in front of them of all of the proposed amendments.

Mr. Bisson, we have a moment for comments before we start that, so if you'd like, go ahead.

Mr. Gilles Bisson: Listen: I'm not going to filibuster, if that's what you're worried about, once I get the floor. But I do want to put on the record the New Democratic Party's position on this bill, and afterwards I want to move a motion, so if you'll allow me about four or five minutes, I should be able to do that in that time.

First of all: Can things be done better than how they're currently being done now? Absolutely. Everything can be better: I could be better; you could be better; my next-door neighbour could be better. So it's like a motherhood-and-apple-pie kind of issue. However, is it a question of the current system not working? I think what we've clearly heard through these hearings is that the current system has, quite frankly, served Ontario fairly well when it comes to providing certainty to licensees so that they're able to do what they need to do when it comes to running their operations and, more importantly, being able to finance whatever they need to do with those operations. As they explained, when you go to the bank and you're trying to get money to invest in your paper mill or sawmill, whatever it might be, you've got to be able to demonstrate that you have a secure supply of fibre. That is one of the issues that people have raised. I note that the government has some amendments on that, but nonetheless, that's the cornerstone of the system. We

need to make sure that those who have licence have security of tenure.

What the government is saying, by way of a reason for why this bill needs to be put forward, is that we need to deal with the hoarding of wood by current licensees. I think that's a bit of a misnomer. Do I agree that there has been some hoarding? Absolutely. There has been. But I've always said, and I've been saying since the beginning of the downturn of this industry seven years ago and I continue to say now, that we have the authority within the current act to deal with hoarding if it happens. The minister has the authority, under the act, to say that if there's fibre that is unutilized or underutilized on a current SFL, a sustainable forestry licence—the minister has the ability to basically put that wood up to a competitive bid process and allow whoever to bid on it, because the act is structured in that way.

Does the government have the ability to reallocate wood if a company closes its doors? Absolutely. In fact, we've just seen the government, two years ago, announce that they were going to do such a process, through an RFP process that started about two years ago, that culminated in an announcement sometime this February, if I remember the time correctly. So clearly the current act deals with much of what this government is trying to say that they're dealing with when it comes to this particular bill, Bill 151.

The government, however, is, in its approach to this bill, going to be creating some problems, and this is what I want to speak to and the reason why I'm going to be moving this motion and then the rest of the strategy following out of there. It's that I believe that, first of all, from the perspective of the substance of the bill, there are two sides to the argument. Those who have licences, who are large forestry companies like Tembec and others, would argue, "Don't muck around with our licences. We need to make sure that we have security of tenure." It is not to their advantage—and I understand that—to be making wood available to those people who may be the moms-and-pops out there. If I'm trying to do a hardwood mill, a birch mill or whatever it is, currently what happens is that the government has decided, over the last number of years, under the Liberals, "Go and do a deal business to business. Go see the company. Get your wood that way." For a lot of people who have gone into that process, it has been rather frustrating, and I've been one of the biggest critics.

However, do we need to change this bill to deal with allocating timber that is not being utilized? Absolutely not. The government could set in place, under this current act that has existed on the books for some years now, a process that would allow people to get access to that wood. Instead, what the government is doing is creating two vehicles: the LFMCs, local forest management corporations; and, on the other hand, we're doing what they call enhanced SFLs, enhanced sustainable forestry licences. In both of those models, there are two different problems that are going to be created.

The first problem is: Under the ESFLs, the enhanced sustainable forestry licences, are we really going to make it easier for the moms-and-pops to get the wood to do the tamarack mill, to do the birch mill, to do the Little John Enterprise kinds of operations? I don't think we resolved that problem with this, because what we're, in a sense, doing is saying to large licence holders, "Come together under a co-operative and share your management of those units with the people whom you make this deal with," and at the end of the day, it really doesn't deal effectively with the issue of allocating underutilized timber. So I don't believe that it's going to resolve the problems for the Little John Enterprises moving to the ESFLs. I think we still have the same problem that we started with. So if the stated idea is to give the Little John Enterprises and others the ability to access wood, the ESFLs under this legislation, Bill 151, are not necessarily going to fix the problem.

Under the LFMCs, we're creating a whole other set of problems. For example, if we move to a competitive bidding process for the wood under these LFMCs, what happens if, for whatever reason, the bidding price is such that it doesn't cover the cost of regeneration? Let's say that we end up in a situation—and it could happen, under a flat market, as we are in now, that you end up with a situation—

Interjection.

Mr. Gilles Bisson: That's my point: The crown will end up having to pay for the reforestation in a competitive wood bidding system.

I think of my friends across the border in the United States, who have been very effective and very aggressive at doing countervail against this country in arguing that we're subsidizing our wood allocation and timber system. If we move to an LFMC with a bid process and all of a sudden we have a situation where we have a competitive bid system for the wood and somebody bids for the wood but the market price doesn't cover the actual cost of reforestation, the government will have to directly subsidize it, and I think that opens the argument to countervail. Will they win it? That's to be seen. I'm going to find a lawyer on this side of the room and a lawyer on that side of the room; they're going to have two different opinions; I understand that. But it does make it open to yet more countervail.

The other thing I would say is on the LFMCs. At the end of the day, any subsidization of roads or whatever it might be that goes to LFMCs raises the issue of an in-

creased possibility of countervail from the United States. I'm not saying that they're going to win that, for the record; I'm saying that they're going to try to win it, and we're just going to be back to where we started from. So if the second stated aim of this process is to further protect ourselves from countervail from the United States, I don't believe that this bill does that. In some ways, it actually creates more arguments for them to do countervail. I wonder where we're going.

The last point I want to make is this: The community of Hearst did a lot of work. I see that Mr. Thornton is here. He would be aware of a lot of the work that communities like Hearst did, along with Constance Lake and others—and I know that the parliamentary assistant probably did too—where they're saying, "What we really want to do is to move to a community forest." The government will argue, "This LFMC is like the community forest." Is it? If you took the time—and this will come to my last point, which is process—to really do the work that needs to be done at this point, now that we have a bill before us, the communities of Hearst, Constance Lake and others would say, "Is this really a community forest?" about how it's structured, how it works etc. Probably not, would be my argument.

1410

I want to end on this point, and that is that of process. The government—yes, I'm going to admit it, and I'm going to say it here because I've said it publicly everywhere else. Did the government consult prior to the bill being drafted? Absolutely. The government went across northern Ontario, and they consulted—fairly adequately, I would say—in order to hear what northerners had to say. I don't argue that point; I've never argued that point.

The problem is that once people finally got Bill 151 in their hands, and they started to read it, they didn't see what they thought they were going to see. Industry certainly didn't see what they thought they were going to have and neither did communities. Those who argue for some mechanism of reallocating wood didn't see what they were going to have.

The government has now brought a bill before us that is very different from what it is the public wanted—at least what they stated they wanted in the public hearings, pre-introduction of the bill. Then we're being told, "Well, don't worry. We have amendments somewhere within these some 300 amendments that we have in here"—of which there's maybe about half a dozen that are government amendments—"that are going to deal with all the concerns of northerners." That doesn't cut it.

I think there's a lot of people in northern Ontario as citizens, mayors, councils, chambers of commerce, labour councils, First Nations, businesses and others who are saying, "I ain't convinced that these amendments are really going to do what needs to be done." That's why we as New Democrats, supported by the Conservatives, called for public hearings in northern Ontario: so that we could actually go with the bill and have people have a discussion with us about what's in the bill and what they want. Now that we have these amendments, we should

really be having a discussion with northerners because this bill is going to fundamentally change the way that we reallocate and price timber in northern Ontario. It's something that's going to be around for a long time, if passed and if the Liberals get re-elected. If they don't get re-elected, I'm going to signal to you it'll be a very different world for New Democrats as far as our approach to this whole thing, should we form the government.

I would say to the government that you should slow this process down. In this clause-by-clause, I am going to assist my friend in the Conservative Party in order to allow that to happen, because I really do believe that this whole process has been, quite frankly, from a process perspective, faulty. On substance, I'm not so sure that we really got it clear.

I have a motion, and I'll give it to the clerk, but I'll just read it for the record. It reads as follows:

I move that the McGuinty government acknowledge:

—the third party's unmitigated disagreement with all sections put forward in Bill 151, the Ontario Forest Tenure Modernization Act;

—the rushed process that facilitated the passage of Bill 151 through the House and the lack of proper consultation in northern Ontario that exacerbated the challenges of the process;

—the failure to address Bill 151's long-term impacts on the forestry industry.

I'd like to table that with the clerk so that we can have a vote. As the clerk comes around to get that, I imagine the government's going to vote against us. We'll get another chance tomorrow because we have a similar motion that will be debated on opposition day for the New Democrats on Wednesday this week.

The Chair (Mr. David Oraziotti): Do you want to move on to the first one here until we get a minute to take a look at that? Is that possible?

Okay, we'll take less than five minutes, folks, so don't go anywhere. We're just going to get this copied, get it out to everybody, and then we can have a conversation about this motion.

Mr. Dave Levac: Mr. Chair, procedurally, can I get it checked as to whether or not that would be doable under the rules? Whether or not you can use an opposition day motion and committee work at the same time to discuss the same thing. I'm just not sure. Procedurally, I think we just need an answer on that because if that were the case, it would be difficult for the committee.

Mr. Randy Hillier: Well, it's not written up the same as the opposition motion.

Mr. Dave Levac: Just for clarity purposes.

The Chair (Mr. David Oraziotti): Mr. Levac, just to your point, a member is permitted to bring a motion forward for this committee's consideration independent of their opposition day motion.

Mr. Dave Levac: Okay. I just didn't know what the rule was.

The Chair (Mr. David Oraziotti): We'll just adjourn the committee for a few minutes.

The committee recessed from 1413 to 1418.

The Chair (Mr. David Oraziotti): Does everybody have a copy of the motion? Mr. Bisson, do you have any other comments you want to add to this?

Mr. Gilles Bisson: I would first want to hear what others have to say, in fairness.

The Chair (Mr. David Oraziotti): Okay. Mr. Brown, do you want to respond to Mr. Bisson's motion that's in front of us?

Mr. Michael A. Brown: I'm going to be very brief. This is a resolution that is decided easily, on adoption of the committee's report, when we get to clause-by-clause. Frankly, I would believe it to be out of order at this point.

Interjection.

Mr. Michael A. Brown: You just vote no.

The Chair (Mr. David Oraziotti): Thanks for your comments. Mr. Hillier.

Mr. Randy Hillier: Once a motion is on the floor, it's not out of order.

I'm going to say this: I think it's completely evident to all members of this committee, from the two days of hearings that we had here, that the government has failed in its objective. It has completely failed northern Ontario. It has completely failed the communities of northern Ontario and forestry.

It was so clear that if the government side really had honest intentions here—they should pull this bill. They should pull it out of committee, because everybody's upset, in forestry, with this government. You need to pull this bill away. You need to pull it off the table and, really, come back with what the forestry industry needs. We can go on—we know there are 270 amendments here and we will get through them, but really, these are only the amendments to what's in the bill. You're also missing substantive stuff in this bill that never got put in there.

For example, on the pricing side, Mr. Bisson raised a number of things with countervails and whatnot. But really, the bill is absent in any objective on pricing. Myself, I think what we need to have in this bill is a clear objective that we want our forestry—the fibre, that resource—to be priced competitively, so that we can compete against other jurisdictions. Nowhere in this bill does it even begin to mention pricing. The only thing it talks about is the division of revenue, but it doesn't talk about pricing whatsoever, and we know that that is a key component for a healthy, vibrant and prosperous forestry sector.

You've missed the boat significantly. The attempt by this government and in this bill that the minister would have arbitrary powers to remove people's tenure and licences and allocations—that should have been so obvious. I can't believe that it got through the process into this bill. It's contrary to our NAFTA agreements; it's contrary to chapter 11 of NAFTA. It's contrary to the concepts of natural justice, that seizure or revocation of licences, arbitrarily and without compensation—we know that that's a non-starter. I can't believe that this government inserted it in this bill.

Really, I think it's a poor bill. I agree with and support the member from Timmins–James Bay and the third party. You've failed, failed completely.

One other thing that I would like to see, that I really, truly want to see happen in clause-by-clause, is for members of this committee from the government side to actually voice and express an opinion on some of these clauses and some of these motions, unlike every other committee that I've been in with this government, where nobody, except for the one delegated individual, speaks. I want to see the members of this committee actually look, read and think about these amendments, and express an opinion. Justify why you're either voting for it or voting against it, and not just voting for the party line.

The Chair (Mr. David Oraziotti): Okay. I think everybody has been heard on the motion. All in—

Mr. Gilles Bisson: Recorded vote.

The Chair (Mr. David Oraziotti): A recorded vote has been called for. All those in favour?

Mr. Randy Hillier: A 20-minute recess.

The Chair (Mr. David Oraziotti): Okay. A 20-minute recess has been called for. We'll see you back here at 2:44.

The committee recessed from 1424 to 1444.

The Chair (Mr. David Oraziotti): All right, folks. We've got a motion in front of us, moved by Mr. Bisson. We've had debate and 20 minutes to contemplate it. A recorded vote has been called for.

Ayes

Bisson, Clark, Hillier.

Nays

Balkissoon, Brown, Brownell, Kular, Levac.

The Chair (Mr. David Oraziotti): The motion is lost. Mr. Bisson, NDP motion number 1 that's before us.

Mr. Gilles Bisson: No, we're still in discussion here. Sorry. We're not into amendments yet. I have a second motion because I contemplated that we might not get the support.

Listen, again, I'm not going to speak at length to what I'm about to put forward, but I want to give it some explanation. So I'll read it and then we'll have a bit of a discussion.

The motion moves us forward—

Mr. Michael A. Brown: This is out of order, isn't it, Mr. Chair?

Mr. Gilles Bisson: No, it's not out of order. You're allowed to move a motion.

I move that the Standing Committee on General Government immediately adjourn clause-by-clause consideration of Bill 151, the Ontario Forest Tenure Modernization Act, 2011, and convene a meeting of the subcommittee for the purpose of scheduling public hearings in northern Ontario for input on the original draft of Bill 151 and the government amendments as tabled.

The motion is fairly straightforward. What we heard from deputants who came before this committee—and I'm sure Mr. Hillier and Mr. Clark will speak to this as well—was that people were saying that the bill was very different than what they anticipated the bill was going to look like when we were out on consultation, pre-introduction of the bill. The bill now before us is not something that they saw when they did the original consultation, and they're saying—as we heard from the Domtar people, we heard from Tembec for sure, and a few others, who said to us, “We understand that there are some government amendments coming.” What they said was, “Depending on what those amendments are, we may or we may not support this bill.” What we clearly heard from those people who were maybe not necessarily supportive of the bill but who said they could support it if you were to amend it in some ways was, “We need to see what those amendments look like.” From the OFIA's position, and a whole bunch of other people who presented, it's the general sense of, “We have not seen what the amendments are. The amendments are basically going to deal with the substance of the bill, and we ask that the bill go back out into committee in order to give it a chance to have some public hearings.”

So the logic is that this is now an amended bill. It looks different. It is within the rights of this committee to do further public hearings if we should so decide, and what this motion does is give the committee the ability to have hearings in northern Ontario with the original bill plus the amendments, so that people can take a look at it, can comment on it. At least then we would be debating something at clause-by-clause that we know has either got the buy-in or not of some of the key stakeholders in northern Ontario.

The Chair (Mr. David Oraziotti): Mr. Bisson, we have direction from the full committee to be here today to hold the clause-by-clause section of the bill. This has already been discussed. We've been down that road before. We've held the subcommittee meeting and we've held the full meeting of the committee to decide that we should be here today to deal with the clause-by-clause portion of the bill.

You have the right to introduce the motion. It's not technically out of order, but the reality is that what you're talking about doing has already been decided by the committee. So if you want to go down that road again, I think the committee has decided already on that.

Mr. Gilles Bisson: Chair, I respect that you're being very fair and very balanced in your approach, and do appreciate that, I want you to know. I've said to you publicly that as a Chair I think you're a damn good Chair, and what I heard you say is that the motion is in order. I do understand what you said and I understand your argument, but nonetheless I am in order to put the motion forward. That's what I'm doing, and I'd like to hear what people have to say about it.

The Chair (Mr. David Oraziotti): All right. Do you want to comment, Mr. Clark? Go ahead.

Mr. Steve Clark: I just want to speak in favour of Mr. Bisson's motion. I think he makes a very good point: that

we had people make the delegation to our committee who had discussions with the government about amendments. We had others who, right after, had no idea that there were amendments being tabled. I think Mr. Bisson is absolutely right: That's what we heard from people. We should adjourn. We should have a subcommittee meeting based on Mr. Bisson's motion. I can appreciate that, before we started this process, we met and the recommendation came forward and Mr. Brown, through his amendment, removed all of the northern hearings from our subcommittee report. We did hear a number of folks who had those amendments shared; we had more who did not. I think it's a very, very relevant motion for us to discuss.

Mr. Gilles Bisson: I'm not going to debate myself, but I do want to respond to one point that Mr. Clark made. I think it's the point that I was trying to make, and I just appreciated that he picked up on it. It's that what we did hear from the public was that they understood the bill was going to have some amendments. It is now amended, and so I think it's perfectly fitting that we go back and give industry and others in northern Ontario the opportunity to see what this amended bill looks like.

I don't see this as deleterious. We're going to be having ourselves a legislative break at the end of this week. The committee could choose to travel to northern Ontario next week. It is fully within our rights, and we have done that on intersession breaks before. That was the spirit of what I was trying to do: accommodate what we heard from the people who came and presented to us as to this bill.

The Chair (Mr. David Oraziotti): Mr. Brown?

Mr. Michael A. Brown: The committee has decided this.

The Chair (Mr. David Oraziotti): Anything further?

Interjection: I couldn't hear. What did he say?

Mr. Michael A. Brown: I said that the committee has decided this.

Interjections.

1450

Mr. Randy Hillier: The member from Timmins—James Bay has put a good motion on the floor, and the member from Leeds—Grenville made excellent points.

This government went out and specifically met and talked with certain members of the forestry industry—

Mr. Michael A. Brown: One hundred and sixteen.

Mr. Randy Hillier: No, no; after the statement and the introduction of the bill, it went out and spoke with a few hand-picked people in the industry, and from what we understand, from what was said in this committee during those two days, some people were led to believe and were informed, or it was implied, that the government was going to fix up and bring out amendments—amendments that they didn't share with us, amendments that they didn't share with this House, because clearly the government knew the bill was faulty.

To deprive all the other people who are involved in forestry of the same level of influence and being able to express their opinions is contemptible of the process. It's

contemptible of the process that only certain hand-picked people are going to have the ear of the government and have some of these amendments brought forward.

I'm certainly in favour of Mr. Bisson's motion. I think we have a duty and we have an obligation to actually go out and do what the subcommittee originally agreed to, what Mr. Bisson—in light of this new information that came out of the delegations, we have a duty and an obligation to do exactly that.

I think each member on this committee ought to be vigorous in their defence of the process, vigorous in their defence of their constituents; express themselves—I know we didn't hear any opinion in the last vote on Mr. Bisson's first motion. We haven't heard any response, except from the parliamentary assistant, on this motion, but I do know that the member from SD&G, the member from Brant, Mr. Balkissoon, Mr. Kular—you all have constituents, and I think you all recognize that you have a duty to represent and advocate for their interests and demonstrate to your constituents why you are voting in a particular fashion, either in favour or not in favour.

Put forth your justification as to why you think it's not valid to go and listen to people, if that's the way you're going to vote. Put forth that justification. Demonstrate to your constituents just why you're here.

I would be happy to take that time next week, constituency week, to travel with this committee; go up and listen to the other people, not just the hand-picked people of government, and listen to everybody and what they have to say about Bill 151 the way it stands and Bill 151 with the proposed government amendments.

The Chair (Mr. David Oraziotti): Thank you, Mr. Hillier. I think we're fairly clear on the motion.

Mr. Gilles Bisson: Recorded vote.

Mr. Randy Hillier: And a 20-minute recess.

The Chair (Mr. David Oraziotti): A 20-minute recess has been called for.

Mr. Gilles Bisson: The time, Chair?

The Chair (Mr. David Oraziotti): We'll return at 3:15.

The committee recessed from 1455 to 1515.

The Chair (Mr. David Oraziotti): All right. Everybody has the motion in front of them and has had an opportunity to review it. A recorded vote has been called for. We've had our recess on the motion.

Ayes

Bisson, Clark, Hillier.

Nays

Balkissoon, Brown, Brownell, Kular, Levac.

The Chair (Mr. David Oraziotti): The motion is lost. Mr. Bisson.

Mr. Gilles Bisson: All right, so the government is saying that not only did we not travel to northern Ontario for hearings at second reading, but even with the amendments now tabled, the government does not want to do

additional public hearings. I think that's regrettable, but it is the government's decision. They're on record as voting against that.

I have another amendment and another motion that I think might be helpful. I'm going to read it and then I'll explain it. The motion reads as follows:

I move that the Standing Committee on General Government immediately adjourn clause-by-clause consideration of Bill 151, the Ontario Forest Tenure Modernization Act, 2011, to allow members of the committee to conduct a comprehensive review of all amendments tabled as of Monday, April 18, 2011, and be authorized to meet on Wednesday, May 11, during its regular meeting time for the purpose of clause-by-clause consideration of the bill.

Now, the motion, I think, is pretty straightforward. Here's the package. I got it by email this morning at about 10 o'clock, and everybody in this place knows that by 10:30, we're in question period. So nobody got a chance to read this until at least after question period, other than those who drafted the amendments. In our case, in the New Democratic caucus, we had one amendment. The Liberals have, I believe, a dozen, maybe? Something like that, whatever the number is. But certainly, the Conservatives have a couple of hundred, by the looks of it.

To say that we have had time, on the Liberal side, my side or even the Conservative side—to say we've read all of these amendments and we understand them to be what they are is one thing. But the government has got some substantive amendments, and I think we need to have an opportunity to have a chat with people like Tembec, with people like Little John Enterprises, with people like the OFIA and others out there who are going to be very interested in finding out if these particular amendments put forward by the government actually do what they purport to do—and also just to get our heads around all of these particular amendments that have been moved forward.

I see amendments here on section 3 of the bill, dealing with the need for consultation; I see subsection 3(1); I see section 28. There are all kinds of amendments that, quite frankly, nobody has had a chance to read. So the motion, I think, is not deleterious. It's one to give members an opportunity to do their jobs as legislators: for us and our staff to go back, read this package of amendments, find out if it does what it's supposed to do, and then come back here at the next available opportunity, which would be April 18, after we come back from constituency break.

The Chair (Mr. David Oraziotti): Mr. Bisson, I just want to clarify something with your motion. The first available opportunity, I believe, to come back will be May 4, a Wednesday, following the constituency week, as Monday is a holiday.

Mr. Gilles Bisson: Oh, I'm sorry. Can I amend that? You are right, Chair. I looked at the calendar very quickly. That should read "May 4." That's my mistake, and I stand corrected. Thank you very much. That was very helpful.

The Chair (Mr. David Oraziotti): Mr. Hillier.

Mr. Randy Hillier: I absolutely agree with Mr. Bisson's motion. This is all the result of the committee not allowing for enough discussion, enough time and scheduling. When we had that debate on the subcommittee report, it was raised up at that time by changing the subcommittee report. Being in a haste to get these things done, the time frames were condensed. It was absolutely ridiculous to think that those time frames could have been met in the first place: to have our last delegations last Wednesday at 6 o'clock and have the substantive amendments brought forward with absolutely no time to investigate the merit of the amendments, but being expected to, of course, vote on the amendments.

It's absolutely atrocious, in my view, that the government didn't open up those time frames when they voted down sections of the subcommittee report. The subcommittee report was well thought out. It was put together with good, honest discussion.

Now the government and this committee finds itself in a very, very significant predicament. The industry, the communities of the north have not been heard. What they did hear back in January isn't encapsulated in the bill whatsoever. We have 200 very substantive amendments that nobody has had time to read—other than, of course, the few hand-picked people the minister may have had discussions with, that came out of our delegations last week. Others out there in industry know more about these amendments than us.

We got the initial batch of amendments on Friday at 5 p.m. We got the last amendments in at—I believe I received them by email at 11:15 this morning.

There's no way the members of this committee cannot see that there's value and significance in providing some additional time for the members of this committee to actually read through, understand, comprehend what the amendments are and then seek the input of the people who are going to be affected by this bill, to see if indeed the minister's special meetings with them got encapsulated in those amendments or not and just how they're going to affect people.

The Chair (Mr. David Oraziotti): Any further comment? Go ahead, Mr. Clark.

Mr. Steve Clark: Can I just add, Chair—thank you for the opportunity—certainly, I would have preferred that the previous motion was passed so that we could schedule the hearings. I do agree with my two colleagues on this side of the table that having that additional time would give us the opportunity to speak to the people who took the time, either here in person in Toronto or using the video conferencing, so that we could discuss with them. It was very clear, as we've said on a couple of occasions this afternoon, that there were certain folks who had access to the government amendments; there were many others who did not.

I think by providing this opportunity for us to take some time during our constituency week, while we won't be travelling to the north as a committee, it will give us the opportunity to talk to all of the folks who were here

who made presentations either in oral form or the numerous people who emailed us, sent us written deputations. It would give us the opportunity to distribute that to them, to get some comments and to be prepared on May 4 to be able to get that feedback and provide it as part of the clause-by-clause. I certainly agree with Mr. Bisson and Mr. Hillier that this third motion does provide us that opportunity, and I would hope that we'd get some crack in the armour across the room here in that they would support it as well.

The Chair (Mr. David Orazietti): Okay, thanks for your comments. Mr. Brown?

Mr. Michael A. Brown: It's an interesting concept. The government does have five motions. I believe the member from Timmins—James Bay indicated they have one. I think we could handle dealing with six this afternoon. However, that's not how this committee process works. I have heard a number of suggestions that are totally unprecedented in this democracy, but that's okay today, in terms of process.

I'm inclined to think that we should perhaps adjourn. Perhaps with 20 minutes, we can think about it.

Mr. Gilles Bisson: Well, we haven't gotten to the vote yet. I thought all of a sudden we had a warming-up of the waters. I was starting to become somewhat encouraged.

Listen, if you have one amendment or six, or I have one or six, the point is, there were some substantial changes to the bill that industry and others wanted. The government has tabled the six. And to tell you the truth, I've been flipping through this pile of paper as we're sitting here, trying to find your amendments, and they're a bit hard to find, as you can well imagine, with some 200-and-some-odd amendments there.

But my point is this: Those particular six amendments that you put forward as the government caucus—is it five? Okay, five amendments; whatever they are, and my amendment, along with the amendments put forward by the Conservative caucus, but we'll just talk to yours, Mr. Brown. Are they substantial—

The Chair (Mr. David Orazietti): Mr. Bisson, sorry. Excuse me for one minute. I apologize for intervening at this point.

Mr. Gilles Bisson: That's okay.

The Chair (Mr. David Orazietti): But the reality is, we're all well aware of the amendments that are before us. You've got a motion on the floor to adjourn for more time to review the amendments that are before us. Mr. Brown is suggesting that a 20-minute recess be called before we vote on this motion, so we'll take 20 minutes and come back and we'll vote on your motion.

Mr. Randy Hillier: Before we take that 20-minute recess—

The Chair (Mr. David Orazietti): You've had your comments on the motion.

Mr. Randy Hillier: Well, yeah, but the parliamentary assistant—

Interjections.

Mr. Gilles Bisson: Point of order. Whoa.

The Chair (Mr. David Orazietti): We've got a request for a 20-minute recess.

Mr. Gilles Bisson: No, no, point of order. Let me just get to this. There's a suggestion made by Mr. Brown that we have a 20-minute recess before we get back to the discussion of this motion. If he wants to propose that as a motion, he can. At this point, I don't see a motion before us.

The Chair (Mr. David Orazietti): No, he's calling for a 20-minute recess on your motion.

Mr. Gilles Bisson: Are you moving it as a motion?

Mr. Michael A. Brown: You made the motion.

Mr. Gilles Bisson: No, no, I have a motion—

The Chair (Mr. David Orazietti): It's not a point of order. We've got a 20-minute recess, until 10 to, on the motion.

Mr. Randy Hillier: But the debate is not finished.

The Chair (Mr. David Orazietti): The debate is.

Mr. Randy Hillier: No, the debate is not finished.

The Chair (Mr. David Orazietti): It is. Twenty minutes.

The committee recessed from 1524 to 1544.

The Chair (Mr. David Orazietti): Okay. We're going to continue the discussion of the motion that Mr. Bisson has on the floor to adjourn committee. Mr. Hillier has the floor.

Mr. Randy Hillier: Thank you very much, Chair. The parliamentary assistant used the words—what we're doing here, these motions—"unprecedented in this democracy." I'll tell you, what's unprecedented in democracy is this government's absolute lack of respect and absolute lack of regard for the effect this bill may have on people.

I'm going to speak to Mr. Bisson's motion. He raises a valid consideration. There are substantive amendments proposed. I'm sure the government side has also received the submission from the Ontario Bar Association—I think it was put out late Thursday night—on this bill. They have tremendous concerns over the legality and the breaches to the fundamental rules of justice with Bill 151. If that isn't enough justification to take a moment to reflect and fully comprehend the motions, the amendments—if they address the Ontario Bar Association's concerns as well, it would be a travesty if this government moves forward without providing due consideration, time for all of us to make sure that this bill does not significantly harm our forestry industry.

Maybe if I could ask the clerk if the clerk has received and has submitted that Ontario Bar Association brief to other members of the committee.

The Chair (Mr. David Orazietti): Are you asking—do you want the clerk to respond to that comment?

Mr. Randy Hillier: Yes, if you—

The Chair (Mr. David Orazietti): Any written submissions that have been provided would have been sent to committee members.

Mr. Randy Hillier: Because I didn't see this circulated from the clerk to the committee members.

The Clerk of the Committee (Mr. William Short): If it was in by the administrative deadline of 5 p.m. on

Wednesday, April 13, it would have been submitted to all members of the committee. If it came after that, he may have submitted that to each member on his own, if he was late.

Mr. Randy Hillier: If you don't mind, Chair, I think it would be important for all members of this committee to have a copy of the Ontario Bar Association brief. They talk about the vague criteria for altering existing rights.

This is a quote from page 4: "These provisions are, on their face, open to arbitrary application. It is easy for potential investors to perceive possible unfairness and uncertainty in these criteria and to be concerned about the security of an investment."

They very much are opposed to the exemptions from crown liability on the LFMCS.

Here again on page 5: "In addition to permitting the exercise of an extraordinary power on the basis of vague criteria, Bill 151 also fails to include certain procedural protections that usually accompany the exercise of a statutory power, particularly an expropriation power. The principles of natural justice, well-enshrined in the law of Ontario, dictate that:

"(i) notice of an intention to cancel or reallocate rights;

"(ii) a right to respond; and

"(iii) compensation."

None of these protections exist in Bill 151.

Certainly for this government to proceed and ram through this bill without fair consideration, time to look through the brief, look through the amendments and ensure that we are not doing something fundamentally wrong with this bill—this government has already dismissed our northern communities. They've dismissed industry, except for a few hand-picked special exemptions. And now, without time to review these amendments, they're going to be dismissive of our justice system and our obligation to our justice system with this Legislature.

The Chair (Mr. David Oraziotti): Mr. Bisson.

Mr. Gilles Bisson: Thank you, Mr. Hillier. You raised a whole other issue that's worth some discussion. Who was that by?

Mr. Randy Hillier: Chair, if I could hand this to the clerk and have him make copies.

The Chair (Mr. David Oraziotti): Sure.

Mr. Gilles Bisson: Anyway, I just want to get back to the motion that I put forward, although that was very interesting. The motion is to give members of the committee an opportunity to review and to consult with those people who have come before us, and whoever else that we normally consult with as parties, on the amendments as brought forward inside this package of some 200 amendments.

The government promised during the public hearings that it was going to have some amendments that should satisfy certain players, such as Domtar, Tembec and others. I don't know if that's the case. I haven't had a chance to talk to any of them about this amendment. I'm sure the government will say, "Oh, yeah, they're happy,"

but how do I know? I'm not doing my job unless I talk to them.

So that's why I want to have this amendment, as put forward, so that we can have an adjournment—not an amendment, but an adjournment motion—in order to give us an opportunity to go back and have at least some discussions with those stakeholders who expressed that concern when they presented to this committee. At the very least, it's what we could do.

1550

The government has already refused now twice by way of motion to travel to northern Ontario—once by rejecting the subcommittee report that came before this committee and now a second time by voting against the motion that the New Democrats, supported by the Conservatives, brought forward to this committee to have hearings on what are substantive amendments of the legislation. That's why I put it forward.

The Chair (Mr. David Oraziotti): Thanks, Mr. Bisson.

Mr. Michael A. Brown: Finished?

Mr. Gilles Bisson: No, I'm fine.

Mr. Michael A. Brown: Well, I want to help my friend Mr. Hillier out a little bit and let him know the mysterious people who the government has been consulting with in the forest industry working group. That would be Brian Nicks of Eacom; Roger Barber of Abitibi-Bowater; Dan Dedo of Georgia-Pacific; Rob Booth of Domtar; Danny Janke of the Algonquin Forestry Authority; Tom Clark of Westwind; Dennis Rounsville of Tembec; Mike Dietsch of Weyerhaeuser; Dave West of Ainsworth; Marc Dube of St. Marys; Claude Perrier of Buchanan; Peter Nitschke of Bancroft, sustainable forest licence; Al Foley of First Resource Management Group.

Those are the people who are on the working group who have worked with the ministry over a long period of time to do this. As a matter of fact, this is a two-year—

Mr. Gilles Bisson: Could you clarify, Mr. Brown? These are the people you've contacted in order—

Mr. Michael A. Brown: This is the working group.

Mr. Gilles Bisson: —to run these amendments?

Mr. Randy Hillier: Did they know about the amendments ahead of time?

Mr. Michael A. Brown: This is the working group that has had—

Mr. Randy Hillier: Did they know about the amendments? That's what—

Mr. Michael A. Brown: To help my friend, they have been discussing the proposed amendments and others as we go forward. It is fair to say that it has been a full consultation with them. Not necessarily are they getting every amendment each of them personally may like, but at least this is an ongoing process. And if and when this bill is passed, or when this bill is passed, the discussion will continue with these groups and people to ensure that, when there are regulations that are drafted, we come with a product that is good for Ontario, good for northern Ontario communities, good for the general economy and a fair one that allows for entrants that we all think should

be allowed to get onto the present SFLs and allows communities to have more input.

You know, this bill is really about allowing some input to local communities through their board membership, or people from the local communities' board membership, on the local forest management corporations. If that's a bad thing, I want somebody to tell me that.

As we go forward, I want to talk a little bit about consultation. This is a two-year work-in-progress and will continue to be, if and when this is passed. A two-year consultation—and we've only gone to Beardmore, Bower, Cochrane, Chapleau, Fox Lake Reserve, Constance Lake, Dryden, Fort Frances, Hearst, Hornepayne, Huntsville, Gogama, Kapuskasing, Macdiarmid, Marathon, Midland, Parry Sound, Nipigon, North Bay, Pembroke, Sault Ste. Marie, Sioux Lookout, Sudbury, Thunder Bay, Timmins, Toronto and White River, and had in total 116 consultations across this province.

We think it's time to move on. We have presented, as a government, five amendments—five. My friends in the New Democratic Party have presented one. The balance have been presented by our good friends in the official opposition, which on a quick reading are the same amendment over and over, just changing the name of the community.

We think that it is important that people have the opportunity to be heard. We provided two days here in Toronto. There were still, I believe, four spaces available. Espanola wanted to be heard; they were heard. Hearst wanted to be heard; they were heard. We went through the list of communities that wanted to be heard and we shut out none. We heard from various communities. They were much appreciative of the opportunity to engage us with modern communications, i.e., telephones and other methods, and that they've saved large amounts of community money not having to go from their community to one of the major centres. As I've pointed out numerous times, there isn't a whole lot of forest in Sudbury. Sault Ste. Marie does not have a whole lot of forest.

This is about a tenure system to manage our forest resources; that's what it's about. Some people are trying to make it about a lot of other things. It is not. It is about how to manage the forest in a way that, in the 21st century, adapts to the fact that we have just been through the worst downturn in forestry on the North American continent, which has affected many provinces worse than ours, but ours particularly hard. We know that. We want to avoid this happening in the future. We want to get this right.

We think the community involvement is important. We see that, having people in the local community work on this. And, to that end, we intend to do it with two model forests—one in the northeast, one in the northwest—where we can evaluate them as we go. We think that's prudent.

We don't think we can determine everything in advance. I know the opposition parties kind of think that that would be so, but it is, in my view, not possible. We think experience with the model is what really needs to happen to determine whether it's effective.

I have heard a lot of interesting takes on this bill so far, but the one I have the most difficulty with is the idea, again, that we have not consulted. Some 116 consultations in communities across northern Ontario, including quite a number of communities I represent. I think, frankly, it's time for us to move on.

I do think that if this is rushing the members, to read six amendments and understand them—these amendments have been kicking around, thrown out over a week ago into the public view by various presenters. We've not only been working with the presenters, but if you listen to Domtar, if you listen to AbitibiBowater, if you listen to Tembec, they proposed these very same amendments. They're being made. We've heard them. We think we should go forward with them. So they shouldn't be totally new concepts to my friends across the floor, but if they are, they are.

I can deal with theirs; I think we can wrap our heads around what they're intending with their amendments. We're happy to go. We can understand them. Perhaps we have an advantage in that there's more of us than there are of you, but I don't think it's a huge advantage. I think Mr. Hillier, Mr. Clark and Mr. Bisson are quite capable of understanding the opposition amendments and more than able to understand ours. But if that's not so, tell us why and tell us now.

Mr. Randy Hillier: I just—

The Chair (Mr. David Orazietti): I think Mr. Clark was—

Mr. Steve Clark: I just want to make a couple of comments first, and I know my honourable friends will want to respond as well. The motion, as I understand it, is talking about—although I would have appreciated some of your comments, Mr. Parliamentary Assistant, to the previous motion that you voted down.

What we're talking about is the fact that, as of this morning, we received a fairly substantive package, albeit many of the motions are from ourselves—

Mr. Michael A. Brown: Five.

Mr. Steve Clark: I know the number of how many you have. But there were other individuals who made presentations to us that weren't affiliated with your working group, who, as you quite succinctly put on the record, were aware of some of your five amendments that were being proposed. There were many, many others who had a different tune when they made their presentations, either here in Toronto, by video conference or, I'm sure, at the whatever the number you quoted—160, or whatever the right figure was—consultations.

The motion, I think, is very well put: that we would take a small period of time to be able to digest what you're proposing. Whether people brought them here on the floor or not, it's a very substantive bill. I think Mr. Bisson has tried this morning, with our support, to address some of the concerns and the comments that people have brought forward.

1600

I don't think it's unreasonable. I think one of the things that people talked about when they came here was

uncertainty. I think Mr. Bisson's motion, which I know Mr. Hillier and I are going to support, would provide a little more certainty; people would think that we put the brakes on and had that discussion. I don't think that's unreasonable; I don't think that's a bad thing.

When we talked about it in the first round of discussion and you asked for a 20-minute recess, I thought, perhaps, you were doing it so that you would take into consideration what we said, what some of the presenters said, and come up with some comments regarding a May 4 restart, not to tell me all the things that you talked about at the subcommittee. There were people who would have appreciated that same discussion—some of the aboriginals who came to the groups that came here that talked about some of the issues, the fact that flourishing economic development was in the bill. I think they would have appreciated that—the municipalities, FONOM, NOMA, some of the municipal officials.

And I'm not going to get into some of your comments about Espanola. I know you mentioned them in some of your comments, but I don't think what Mr. Bisson is talking about is so ridiculous. I was at the Canadian Club, sitting at the wall, listening to the Premier on Friday at his luncheon. The one thing he did talk about was the fact that the truth about democracy is, the people are always right when it comes to elections. I think that one of the opportunities from Mr. Bisson's motion is that we're trying to put some certainty back into those people in northern Ontario, that we're willing to take a couple of weeks to discuss what was presented here. It's not outlandish; it's not unreasonable.

The Chair (Mr. David Orazietti): Okay. Mr. Hillier?

Mr. Randy Hillier: I want to just comment back on the parliamentary assistant's comments. Let's put some clarification on the record here. When I spoke about the consultations, I was speaking about the minister's and the government's private consultations with some members of the forestry industry that happened just as our committee was meeting and hearing delegations. We heard from a handful of people from the forestry industry that they were led to believe that there would be some amendments that would address some of their concerns being advanced.

When talking about the earlier consultations, of course, there was—I attended a number of them. The ministry did go out and consult. The only problem, of course, is what the minister announced in January and what showed up in the bill in February were two different things. That's what caused the problem. Consultation and then putting forth expectations in January that didn't come through in Bill 151 demonstrated that the consultations—how much value was there in them? Because they didn't come through.

There are many things in this bill you rushed, and in your haste to get this bill in this committee to get it done with, even important stakeholders like the Ontario Bar Association didn't have time to get their comments in to us by those deadlines.

We have an obligation to listen to those people. We have an obligation to make sure that the laws that we

create are just—not just timely, not just politically advantageous; we have an obligation that they indeed provide for justice.

This brief says that you got it wrong—got it substantially wrong. Mr. Bisson's motion is seeking to address your failing that we have the time to actually go through those amendments, see if they cover off the industry's concerns, see if they cover off the communities' concerns, see if they cover off the bar association's concerns and make sure that they don't feel the consequences of your undue haste in this committee. That's what you have an obligation to do.

The Chair (Mr. David Orazietti): Mr. Bisson.

Mr. Gilles Bisson: I'm just reading through this bar association document; it's quite interesting.

I just want to clarify what the parliamentary assistant said. The nature of my motion is simply to say that I have an opportunity, as a committee member in the third party, and Mr. Hillier and Mr. Clark have an opportunity for the Conservatives, to go back and to talk to some of the people who raised concerns at these committee hearings; that, in fact, the amendments that the government brings forward address their concerns, or do not. That's what I'm attempting to do with this.

If I heard the parliamentary assistant, Mr. Brown, correctly, he says that you've already talked to all of these proponents. Those people that you listed on the working group have seen and accepted these amendments as being a remedy to their concerns?

Mr. Michael A. Brown: When I suggested that Mr. Hillier ask who it was, these mysterious people who were off in never-never land, I guess, and nobody knew who they were, I was just helping Mr. Hillier understand exactly who it was that was providing advice to the government of Ontario with—

Interjection.

Mr. Michael A. Brown: Mr. Chair, can I speak? I didn't interrupt him.

Interjection.

Mr. Michael A. Brown: There's no spin here. I'm just telling you who it was the government consults on the working group.

I understand that we have five government amendments before the committee, and I understand that the member opposite says that we do want to ensure that these amendments are doing what the stakeholders would want. I would say that we all know that there will be some different views among stakeholders, but we all know that at the end of the day, you've got to decide which one's right. So if you're asking if everybody's unanimous and thinks that we've done it with all our amendments, the answer is probably no. Do we have significant support in the forest industry? The answer is yes.

Don't take my word for it. You need to make those contacts. If you cannot come to those conclusions, looking at the five amendments the government has placed, then we need to have—whatever.

Mr. Chair, I think we're where we need to be to decide, but apparently some on the other side aren't.

The Chair (Mr. David Orazietti): Let's go back. Mr. Bisson, your motion is still on the floor, your motion to adjourn to the fourth. We have time to review these. Do you want to say anything further to that?

Mr. Gilles Bisson: Yes. I just want to clarify that if those people who came before the committee, and I'm thinking of Eacom, Tembec, Domtar, Abitibi, who raised the concerns around how we need amendments—did you run these amendments by them? Yes or no? That's my question.

Mr. Michael A. Brown: I personally can't give you an assurance that we did for every one, because I personally did not make contact with all of them.

Mr. Gilles Bisson: So they may or may not have, which brings me to my point, Chair, that all I'm asking—I'm not asking for anything that's terrible here. I'm just saying that I want to do my job as a committee member, go back, talk to those stakeholders who have talked to me as a result of their concerns and wanting to have some amendments, and find out if they are satisfied with them. So I'm asking the government to support the motion so that we can do our jobs.

Mr. Michael A. Brown: If the answer is yes, will you support the government bill?

Mr. Gilles Bisson: I might very well do that. Who knows?

The Chair (Mr. David Orazietti): I think everybody understands the motion that's on the floor—

Mr. Gilles Bisson: Listen, just on the record. The question was asked by Mr. Brown: Will I support the bill? My voting record speaks for itself. I've supported the government on all kinds of legislation in committee and in the House, when appropriate. And if this bill does what I would want it to do, certainly I would support you.

The Chair (Mr. David Orazietti): Okay, fair enough.

Mr. Gilles Bisson: But for the record, I don't think it does at this point.

Mr. Michael A. Brown: With the five amendments?

Mr. Gilles Bisson: I don't know. I've got to go and see what the amendments are. I just saw them. I haven't even had a chance to read them.

The Chair (Mr. David Orazietti): Your motion is on the floor to adjourn to May 4 so that individuals have time to review this.

Mr. Gilles Bisson: Recorded vote.

Mr. Michael A. Brown: Recorded vote.

The Chair (Mr. David Orazietti): A recorded vote has been called for and a 20-minute recess. We'll see you back here at 4:30 for a vote on this motion.

The committee recessed from 1610 to 1629.

The Chair (Mr. David Orazietti): We've got a couple of minutes, but is everybody ready to vote? With the consent of committee, we'll call the vote now. Is that agreeable to everyone? Agreed.

Everyone has the motion in front of them. Do you want a moment to review it?

A recorded vote has been called for.

Ayes

Balkissoon, Bisson, Brown, Brownell, Clark, Hillier, Kular, Levac.

The Chair (Mr. David Orazietti): The motion is carried. Committee is adjourned.

The committee adjourned at 1629.

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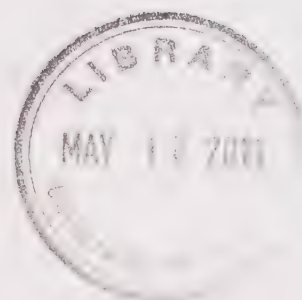
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Standing Committee on General Government

Ontario Forest Tenure
Modernization Act, 2011

Comité permanent des affaires gouvernementales

Loi de 2011 sur la modernisation
du régime de tenure forestière en
Ontario

Chair: David Oraziotti
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENT

Wednesday 4 May 2011

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Mercredi 4 mai 2011

*The committee met at 1620 in room 228.*ONTARIO FOREST TENURE
MODERNIZATION ACT, 2011LOI DE 2011 SUR LA MODERNISATION
DU RÉGIME DE TENURE FORESTIÈRE
EN ONTARIO

Consideration of Bill 151, An Act to enact the Ontario Forest Tenure Modernization Act, 2011 and to amend the Crown Forest Sustainability Act, 1994 / Projet de loi 151, Loi édictant la Loi de 2011 sur la modernisation du régime de tenure forestière en Ontario et modifiant la Loi de 1994 sur la durabilité des forêts de la Couronne.

The Chair (Mr. David Orazietti): Good afternoon, everyone, and welcome back to the Standing Committee on General Government. We're here this afternoon for clause-by-clause on Bill 151.

I understand that there are a number of amendments that are going to be withdrawn, so perhaps I'll let you speak to that, Mr. Hillier.

Mr. Randy Hillier: Yes, thank you, Chair. Seeing as the government has generously allotted us about 45 minutes to debate and correct the failings of Bill 151, I'm going to withdraw PC motions 4 through 124, inclusive, and 145 through 267, inclusive.

I should also put on the record that it was nice to see the mayor from Dubreuilville here today, complaining about Bill 151 as well.

Mr. Michael A. Brown: She was not here to do that.

The Chair (Mr. David Orazietti): All right, let's just speak to the—are there any other amendments?

Mr. Gilles Bisson: No.

The Chair (Mr. David Orazietti): Okay. We're going to come back to it.

Mr. Brown, do you have anything with regard to the amendments? I just want to get straight, first of all, what we're dealing with on the bill.

Mr. Michael A. Brown: Yes, 124.1.

The Chair (Mr. David Orazietti): It's withdrawn?

Mr. Michael A. Brown: To be withdrawn, yes.

The Chair (Mr. David Orazietti): Okay, 124.1?

Mr. Michael A. Brown: Motion 124.1.

The Chair (Mr. David Orazietti): Is that it from the government side, Mr. Brown?

Interjection.

The Chair (Mr. David Orazietti): Mr. Bisson, do you have anything to add on the amendments that are before us?

Mr. Gilles Bisson: No.

The Chair (Mr. David Orazietti): So what you've submitted is on the floor?

Mr. Randy Hillier: Chair, the package that I have does not include 124.1.

The Chair (Mr. David Orazietti): The packages are double-sided, so perhaps it's on—

Mr. Randy Hillier: Oh, yes. My mistake.

The Chair (Mr. David Orazietti): Okay, so 124.0.1 is in and 124.1 is out—government motion. Your motion is still on the floor: 124.0.1.

Mr. Hillier, if you—

Mr. Steve Clark: Can I just say something, Chair?

The Chair (Mr. David Orazietti): Mr. Clark, go ahead.

Mr. Steve Clark: I just want to say how disappointed I am. We made a decision here, because there were no public hearings, that we were going to have live streaming of our proceedings. I think Mr. Hillier brought up earlier in committee the fact that the advertising for the live streaming was really poor at best. The notices didn't include that this was live-streamed. It was very innocuous on the website. It was just generally a very terrible job to promote this, and then for us to have clause-by-clause and to have again—we've moved now to 228, which I know has no capabilities to live-stream like we had in the Amethyst Room. So I just want to put on the record how extremely incensed I am that we made a decision here in committee and it wasn't carried out on Bill 151. It's just a real lack of carrying out the committee's direction.

The Chair (Mr. David Orazietti): Well, I appreciate your comments on that matter, Mr. Clark, but, certainly, during discussion at committee, it was both my interpretation and the clerk's interpretation that the streaming was with respect to the committee presenters and the deputations that we were going to hear from the public, as opposed to—

Mr. Steve Clark: Chair, if we're going to have access—

The Chair (Mr. David Orazietti): —not just the clause-by-clause portion.

Mr. Steve Clark: My comments stand.

The Chair (Mr. David Oraziotti): Do you want to move section 1, your amendment number 0.1?

Mr. Randy Hillier: I move that the bill be amended by adding the following section:

“Purpose

“1.1(1) The purpose of this act is to establish no more than two pilot Ontario local forest management corporations over an initial full business cycle that begins on the day this section comes into force and ends no earlier than on the fifth anniversary after the day this section comes into force and no later than the seventh anniversary after the day this section comes into force.

“Assessment of pilot corporations

“(2) At the end of the initial full business cycle and before any further Ontario local forest management corporations can be established, the two pilot Ontario local forest management corporations,

“(a) shall be assessed through an independent review against prescribed criteria; and

“(b) shall be compared using the same prescribed criteria to alternative tenure models, including sustainable forest licences issued under section 26 of the Crown Forest Sustainability Act, 1994.

“Initial full business cycle

“(3) Subject to the time periods set out in subsection (1), the Lieutenant Governor in Council shall determine the length of the initial business cycle.

“Conflict

“(4) In the event of conflict between this section and any other section of the act, this section prevails.”

I might just add that it is nice to see that the government has put forward a couple of amendments that begin to address some of the concerns expressed by people at the committee. I believe the PC motion is far more thorough and complete on meeting the expressed concerns that we heard.

The Chair (Mr. David Oraziotti): Just for a point of order here in terms of process—and I’ll certainly let you come back to the comments around this motion, 0.1—I’ve been informed by the clerk that there is, as part of the package, a section 1, of which there are no amendments to. We need to vote on that first, and then we can come back to the new section here that you’re proposing, section 1.1.

Mr. Randy Hillier: Do I have to reread it?

The Chair (Mr. David Oraziotti): No, you won’t.

So I’m going to ask that we vote on section 1 first, and then you can come back to your motion.

All those in favour of—

Mr. Gilles Bisson: Recorded vote.

The Chair (Mr. David Oraziotti): Recorded vote. Section 1 of the bill: All those in favour?

Ayes

Balkissoon, Brown, Brownell, Jaczek, Mangat.

Nays

Bisson.

The Chair (Mr. David Oraziotti): Okay, section 1 is carried.

So back to your motion, 0.1: section 1.1. Go ahead, if you had any further comments on that.

Mr. Randy Hillier: I don’t have any further comment.

The Chair (Mr. David Oraziotti): Mr. Brown?

Mr. Michael A. Brown: The government will not be supporting this motion. We do, as Mr. Hillier has pointed out, address these issues in our motions 2.1 and 124.2.

Mr. Randy Hillier: I think it’s very clear why I’ve put this motion forward: It’s up front, nice and clear, and for everybody to know exactly what the purpose of this bill is. As I said, although the government motions take steps, they fail to address fully the concerns that were expressed by so many communities and industries and individuals to this committee.

The Chair (Mr. David Oraziotti): Mr. Bisson?

Mr. Gilles Bisson: I want to support the Conservative motion for the following reason: It seems to me that it is substantive, and it’s more substantive on a couple of points. First of all, the government amendment, 124.2, is not as prescriptive as what we see in this particular motion brought forward by the PC caucus.

What it seems to me that they’re attempting to do here, which makes some sense, is to ascribe some form of direction as to what’s going to happen at the end of the five-year review through what is recommended under 1.1(2)(a) and (b), that the assessment will be done by an independent group in order to determine what happens: Was it successful? Wasn’t it successful? What did we learn? There are some criteria in order to be able to do that in a way that I think is much more independent than what the government has here.

The motion that the government has, which I can’t speak to now because it’s not on the floor—I’ll speak to it later, but I’m just generally saying that it’s not as prescriptive. So I would support the motion on the basis that it’s more prescriptive than the government one.

The Chair (Mr. David Oraziotti): Okay. Any further comment?

Mr. Randy Hillier: Lastly, I hope the government side appreciates and understands that this amendment is not done in any partisan fashion. It’s just prescribing and demonstrating that the review of the LFMCS—and that’s what we want to see: a full and complete review of those LFMCS; that we know what the review is and that there are the mechanisms in place for that full and proper review.

The Chair (Mr. David Oraziotti): Any further comment? All those in favour?

Mr. Gilles Bisson: Recorded vote.

The Chair (Mr. David Oraziotti): A recorded vote has been called for. All those in favour of PC motion 0.1?

Ayes

Bisson, Clark, Hillier.

Nays

Balkissoon, Brown, Brownell, Jaczek, Mangat.

The Chair (Mr. David Orazietti): The motion is lost. NDP motion 1—

Mr. Gilles Bisson: This is on section 2, right?

The Chair (Mr. David Orazietti): Yes, section 2.

Mr. Gilles Bisson: I move that section 2 of the bill be amended by adding the following subsections:

“Duty to consult etc.

“(2) In administering this act, the minister shall do so in a manner,

“(a) that is consistent with the recognition and affirmation of existing aboriginal and treaty rights in section 35 of the Constitution Act, 1982, including the duty to consult; and

“(b) that accommodates First Nations.

“Definition

“(3) In this section,

“‘First Nation’ means a band within the meaning of the Indian Act (Canada).”

1630

It's pretty straightforward. We've done similar provisions within the Mining Act, which I thought, of all the changes in the Mining Act, there were some that were positive. I thought this was a positive move on the part of the government, and I ask that we do the same in this particular legislation.

The Chair (Mr. David Orazietti): Mr. Brown?

Mr. Michael A. Brown: The government will not be supporting this amendment. The bill is about the creation of local forest management companies, whose stated objective or purpose includes provision of economic development opportunities for aboriginal people. The province will continue to respect and fulfill its obligations that arise pursuant to section 35 of the Constitution Act, 1982, and will continue to consult on activities such as forest management planning as appropriate.

The Chair (Mr. David Orazietti): Mr. Bisson, go ahead.

Mr. Gilles Bisson: I do not want to prolong the debate because we're under time allocation, but it seems to me that if the government is saying it wants to do that in the first place, then why not put it in the legislation? To me it seems to be a bit of a no-brainer. It is about what happens in this act. How this act is going to be used in the future is going to affect a number of First Nations in the Far North and across northern Ontario itself. It seems to me that doing what we did in the Mining Act, at the very least, is not a bad thing.

The Chair (Mr. David Orazietti): Mr. Hillier?

Mr. Randy Hillier: I will be supporting the NDP motion. I'm very surprised that the government is not supporting this, as Mr. Bisson has identified it was recognized for the Mining Act. But I guess the improvements to the Mining Act don't extend to the forestry business.

The Chair (Mr. David Orazietti): Further comment?

Mr. Gilles Bisson: Recorded vote.

The Chair (Mr. David Orazietti): A recorded vote has been called for.

Ayes

Bisson, Clark, Hillier.

Nays

Balkissoon, Brown, Brownell, Jaczek, Mangat.

The Chair (Mr. David Orazietti): The motion is lost. Shall section 2 carry? All those in favour? Opposed? Section 2 is carried.

Section 3: Conservative motion 2.

Mr. Randy Hillier: I'm going to withdraw that motion, as it's covered by a government motion later on.

The Chair (Mr. David Orazietti): The motion has been withdrawn.

Motion 2.1: Mr. Brown.

Mr. Michael A. Brown: I move that subsection 3(1) of the bill be amended by adding “on the recommendation of the minister” at the end.

It just merely cleans up the bill. It's a housekeeping measure.

The Chair (Mr. David Orazietti): Mr. Bisson.

Mr. Gilles Bisson: I'm not hostile—I might be hostile to the amendment; I'm not sure. Tell me if I can ask legislative counsel a question: The way that 3(1) works now, basically cabinet can do what it wants, because the Lieutenant Governor in Council—that's basically what that is. Why put “minister”? What strength? What weakness? What does it do?

Mr. Albert Nigro: By adding the term “on the recommendation of the minister,” it makes it clear that the minister responsible for this statute would have to recommend that the regulation incorporating a local forest management corporation be made, be brought forward.

Mr. Gilles Bisson: Let's say the Premier wanted to do it and the minister didn't want to do it. Do you have an impasse? Is that what you're getting at? It's kind of bizarre.

Mr. Albert Nigro: In the system of cabinet government under which we work—

Mr. Gilles Bisson: You'd be fired. I'd understand.

Mr. Albert Nigro: —I don't know that that would work.

Mr. Gilles Bisson: You'd be fired. My point is, you don't need this for the minister to do what he or she needs to do under that section.

Mr. Albert Nigro: One would presume that in a cabinet model, the minister responsible for this legislation would be involved in the decision to incorporate one of the local forest management corporations.

Mr. Gilles Bisson: That's right. My last question: There's lots of legislation written, “same as sub (3)”; lots of other legislation where we use the same type of language. We don't put “minister”; we say, “the Lieutenant Governor in council may, by” blah, blah, blah. Right?

Mr. Albert Nigro: That's correct.

The Chair (Mr. David Orazietti): Mr. Hillier.

Mr. Randy Hillier: I think I might just add for clarity that it appears that this motion is fluff and nonsense. It doesn't add or change anything in the bill.

The Chair (Mr. David Oraziotti): Any further comments? All those in favour? Those opposed? The motion is carried.

Conservative motion number 3.

The Chair (Mr. David Oraziotti): Originally it said number 4 to 124; 3 through 124. Conservative motion number 3 is withdrawn as well, for the record.

That brings us to your motion 124.0.1, Mr. Hillier.

Mr. Randy Hillier: I move that section 3 of the bill be amended by adding the following subsection:

"Limitation

"(1.2) Despite subsection (1), the Lieutenant Governor in Council shall not incorporate any Ontario local forest management corporation unless,

"(a) no sustainable forest licence has been issued under section 26 of the Crown Forest Sustainability Act, 1994 for the area where the proposed Ontario local forest management corporation is to operate; or

"(b) if a sustainable forest licence has been issued, the licensee agrees to the incorporation of the Ontario local forest management corporation."

If I might just add to that, Chair, looking at the government motions and what the Ontario Bar Association has indicated to the committee, there needs to be absolute clarity about the minister's authority. There also has to be a level of certainty and assurance to the forestry industry. Those proposed government motions, again, are the right step. This PC motion adds far more clarity and adds that certainty to the forestry industry.

Mr. Michael A. Brown: What are you reading?

Mr. Randy Hillier: Motion 124.0.1.

The Chair (Mr. David Oraziotti): Any comment?

Mr. Michael A. Brown: I was wondering why we want to do this.

The Chair (Mr. David Oraziotti): Mr. Hillier, do you want to elaborate?

Mr. Randy Hillier: Can I get my—

Mr. Gilles Bisson: I can explain it for you.

The Chair (Mr. David Oraziotti): Mr. Bisson, go ahead.

Mr. Gilles Bisson: As I read it, it's to make clear that you can't create an LFMC on somebody's existing licence unless the existing licensee says yes. That's essentially what this is doing. It basically says that you can only create an LFMC from crown land that is not under licence. That's basically what it's saying, and if you're going to create one that is under licence to a company, it can't happen without their consent.

Mr. Michael A. Brown: I think this strikes to the heart of the bill. We will not be supporting it.

The Chair (Mr. David Oraziotti): Mr. Hillier?

Mr. Randy Hillier: I have to say, we've heard from so many, including today the mayor of Dubreuilville and what not, that there needs to be a level of assurance and certainty. That is what's scaring the bejesus out of everybody in forestry, Mike. This still gives the minister the

authority; okay? It puts that criteria in place that the minister has the authority, but there's stability, confidence, certainty, and that there is agreement when there's already a licence holder in that area.

I'm not sure where exactly you're proposing these LFMCs, and that's some of the concern. This just gives that level of certainty. If there's a licence holder there, let the government work together with the licence holder to come to that agreement.

1640

The Chair (Mr. David Oraziotti): Further comment?

Mr. Gilles Bisson: Well, the cat's out of the bag. If the government's not prepared to accept this motion, then it means to say that they agree with the premise that people have put before the committee, which is that the minister's going to have the ability to kill—not necessarily kill the licence; that comes later in the bill, but would be able to create an LFMC by taking somebody else's licence. That's what essentially—if you don't allow this, the minister has the ability to say, "Tembec, Eacom"—whoever it is—"we want this particular part of your forest. We think that you're not using it. Therefore, we're taking it and we're creating an LFMC." If you don't put this in the legislation, that's what you're going to be allowed to do.

Clearly, what we heard from Eacom, what we heard from Abitibi, what we heard from St. Marys Paper, what we heard from Tembec and others who were giving some support to the bill, was, "We need to make sure that you don't put our licences at risk." Not accepting this amendment says you're putting those licences at risk.

Mr. Steve Clark: Chair, if this was a curveball—I know there was a little confusion with the motion—if you want to take a minute to consult, this is a really important part. If there's ever any doubt, from your standpoint, just take a minute and consult your staff. I think it's a very reasonable amendment. Mr. Hillier and Mr. Bisson have made excellent points. If you want to consult—I know we only have 40 minutes, but it's a pretty important amendment.

The Chair (Mr. David Oraziotti): Further comments? Seeing none—

Mr. Gilles Bisson: We've asked the question of the parliamentary—this is important. Do you believe that the act, if not amended—if we don't accept this amendment, do you believe that the minister doesn't have or has the power to cancel a licence or part of a licence?

Mr. Michael A. Brown: The bill goes on to speak to the conditions under which a local forest management company can be created.

Mr. Gilles Bisson: Yes?

Mr. Michael A. Brown: We think that is the issue the bill is here to address. I don't think this is a necessary amendment. The government has never in its history in Ontario, under any stripe, for capricious reasons, cancelled anybody's licence, so I think it's totally unnecessary.

What I do dare suggest is that the two opposition parties have totally different views of the way the

Queen's forest is operated on behalf of the people of northern Ontario and the people of Ontario. The government does need to look after its own forests. We're just trying to clarify the fact that the government needs to move in the direction that the bill spells out. I don't understand why there is any real difficulty with what we are saying, given what the other amendments in this bill suggest.

The Chair (Mr. David Oraziotti): Mr. Hillier.

Mr. Randy Hillier: Let me say this: I don't know if anybody on the government side has read the amendments, but 134.1 is a government amendment that begins to approach this.

I am disappointed with the parliamentary assistant's comments. This goes back to a concept called the rule of law. If you read your amendment, the minister still has the complete authority, with such wide latitude, to cancel the livelihood, the licences, the allocations. The only thing you've changed from the original bill with your amendments is, you've said that now it has to be desirous of the minister to want to create an LFMC; right? You've disregarded all the legal arguments presented by the Ontario Bar Association and you're still creating that uncertainty and that instability in forestry. I said that at the beginning: You have taken some steps, but you've missed the essence. You've lost the concept that there ought to be agreement. I find it amazing that you've come up with this amendment and that's the only restriction you've placed on the minister, that it's desirous to create an LFMC.

The Chair (Mr. David Oraziotti): Further comments? Mr. Bisson.

Mr. Gilles Bisson: Well, we're running out of time, and the sad part is, we're probably not going to get to amendment 134.1, which speaks to this. As I read what the government is proposing in the bill and the further amendments coming under 134.1, you clearly give yourself the right to cancel somebody's licence.

What this particular amendment does is say you wouldn't be able to create an LFMC unless it's land that is not licensed by way of the act, or there's an agreement on the part of the licensee. It has been long understood in this province since the early 1990s and even before—and that's what we tried to do under the sustainable forestry development act: give some security of tenure to those people who are operating so that they can do the financing they've got to do to keep their mills modern and do all the stuff that they've got to do.

It seems to me that if we're trying to give some assuredness to the forestry sector that we're not going to muck around with their licences, the very least we can do is accept that motion. I would move that we accept that motion.

We'll get to your little amendment later which is, to me, beyond the pale.

The Chair (Mr. David Oraziotti): Any further comment? Seeing none—

Mr. Randy Hillier: Recorded vote.

Ayes

Bisson, Clark, Hillier.

Nays

Balkissoon, Brown, Brownell, Jaczek, Mangat.

The Chair (Mr. David Oraziotti): The motion is lost. The next motion, 124.1, for the record, has been withdrawn.

Mr. Gilles Bisson: Which one?

The Chair (Mr. David Oraziotti): Motion 124.1 was withdrawn.

Motion 124.2: Go ahead, Mr. Brown.

Mr. Michael A. Brown: I move that section 3 of the bill be amended by adding the following subsections:

“Recommendation of minister

“(1.1) Before he or she makes a recommendation for the incorporation of an Ontario local forest management corporation, the minister shall ensure that a review is conducted and shall have regard to the review in deciding whether or not to make a recommendation under this section.

“Same

“(1.2) For purposes of deciding whether or not to make a recommendation under this section, the minister may have regard to a review that was conducted or updated within three years before the minister decides whether or not to make the recommendation.

“Contents of review

“(1.3) The review shall consider any existing Ontario local forest management corporations and other entities that hold sustainable forest licences granted or extended under section 26 of the Crown Forest Sustainability Act.

“Exception, first five years

“(1.4) Despite subsection (1), the Lieutenant Governor in Council shall establish no more than two Ontario local forest management corporations during the five year period that begins on the day this section comes into force and ends on the fifth anniversary of the day this section comes into force.

“Same, first two corporations

“(1.5) Subsection (1.1) does not apply with respect to the incorporation of the first two Ontario local forest management corporations.”

The Chair (Mr. David Oraziotti): Any further comment?

Mr. Randy Hillier: I'll just say we'll be voting against this motion because again it's fluff and nonsense. There are a lot of words with no substance once again. Who's going to review it? Is it going to be tabled in the Legislature? None of the oversight is included in this. It's an appeasement motion with no substance.

The Chair (Mr. David Oraziotti): Any further comment?

Mr. Gilles Bisson: If you go to the end of that motion with regard to the first two corporations, it says, “Subsection (1.1) does not apply with respect to the incorporation of the first two Ontario local forest management

corporations.” For the first two that we create, it does not have to—“Before he or she makes a recommendation for the incorporation of an Ontario local forest management corporation, the minister shall ensure that a review is conducted and shall have regard to the review in deciding whether or not to make a recommendation under this section.” You’re exempting yourself from actually having a review on the first two. If you follow the logic of how this works, it means to say that the amendment that you’re bringing forward saying you can’t do more than two doesn’t really mean anything. It’s a pretty wide-open door; would you not agree, monsieur l’Assistant parlementaire?

1650

Mr. Michael A. Brown: I would not agree. This section is in place to limit the number of local forest management corporations to two. That is quite simply what it does. We can’t have a review of a forest management corporation that does not yet exist, so I’m not really clear what you’re suggesting, Monsieur Bisson.

Mr. Gilles Bisson: What you’re saying in this amendment is that before he or she makes a recommendation for the incorporation of an Ontario local forest management corporation; I assume you mean the first two. Is that not what you’re getting at in (1.1), “the minister shall ensure that a review is conducted”? If what you’re trying to say in this amendment is that you can’t do more than two, then why would you need to put (1.1) into that? It’s kind of an argument coming back on itself.

Mr. Michael A. Brown: No, I don’t—

Mr. Gilles Bisson: Just follow the logic.

Mr. Michael A. Brown: Let’s have legal counsel perhaps help us with it, because I don’t read it that way.

Mr. Gilles Bisson: The intention of (1.1) is to have a review, right?

Mr. Albert Nigro: The intention of (1.1) is to prevent the minister from making a recommendation in general until a review is conducted; that’s right.

Mr. Gilles Bisson: That’s right. So then, at the very end, under (1.5) it says, “Subsection (1.1) does not apply with respect to the incorporation of the first two Ontario local forest management corporations.” Do you follow what I’m getting at?

Mr. Albert Nigro: I’m not sure that I do, Mr. Bisson, but what it means is that the first two are not subject to the review process.

Mr. Randy Hillier: Yes—

Mr. Gilles Bisson: Well, then, do you plan on making—

Interjections.

Mr. Gilles Bisson: No, no, but my point is, does that mean that you’re planning on making more than two?

Mr. Steve Clark: I’m following you.

Mr. Gilles Bisson: It’s kind of weird.

Mr. Randy Hillier: Let me see. This is quite a circular argument on this motion.

Mr. Steve Clark: It’s a circus.

Mr. Randy Hillier: The first two LFMCs are not subject to the review. You can only create two, so you can’t

have a review on something that doesn’t exist, and the first two are exempt from the review.

Mr. Michael A. Brown: Because they don’t exist. How can you review before you make the recommendation?

Mr. Randy Hillier: The first two are exempt from review. I think the government should very much reconsider the wording of that motion.

The Chair (Mr. David Oraziotti): Any further comment?

Mr. Gilles Bisson: Recorded vote.

The Chair (Mr. David Oraziotti): A recorded vote has been called for on government motion 124.2.

Ayes

Balkissoon, Brown, Brownell, Jaczek, Mangat.

Nays

Bisson, Clark, Hillier.

The Chair (Mr. David Oraziotti): The motion is carried.

Next motion, Conservative motion 125.

Mr. Randy Hillier: I move that a new subsection be added to the bill as section 3(4), and that it state the following:

“3.(4) All local forest management corporations are to be examined under the criteria of financial viability after a period of five years, with the resulting report to be tabled in the Legislature.”

It’s very clear, very concise. There’s no circular or circus with this one. I don’t imagine the government will support it for that reason.

Mr. Michael A. Brown: That’s creative.

The Chair (Mr. David Oraziotti): Mr. Brown?

Mr. Michael A. Brown: We will not be supporting this measure.

The Chair (Mr. David Oraziotti): Any further comment?

Mr. Randy Hillier: Yes. As I said at one of our earlier committees, to diminish yourselves within this Legislative Assembly is one thing. You’re diminishing the next generation of legislators when you turn down motions that would allow the Legislative Assembly to scrutinize and evaluate the activities of subordinate bodies of this Legislature, and that is an atrocious position by the members of this committee and by the government, to actually dismiss and prevent future legislators from reviewing the conduct and the efficacy of our subordinate bodies.

The Chair (Mr. David Oraziotti): Any further comment? Seeing none—

Mr. Randy Hillier: Recorded vote.

Ayes

Bisson, Clark, Hillier.

Nays

Balkissoon, Brown, Brownell, Jaczek, Mangat.

The Chair (Mr. David Oraziotti): The motion is lost. Conservative motion number 126: Mr. Hillier.

Mr. Randy Hillier: This is very similar. I move that a new subsection be added to the bill as subsection 3(5) and that it state the following:

“3(5) All local forest management corporations are to be examined under the criteria of the benefit gained by local communities through the operation of the local forest management corporation after a period of five years, with the resulting report to be tabled in the Legislature.”

With the previous motion struck down, this one becomes a little bit moot, but it demonstrates where the focus ought to be as well: on our communities in northern Ontario.

The Chair (Mr. David Oraziotti): Any further comment? Mr. Brown? Mr. Bisson?

Mr. Randy Hillier: Recorded vote.

Ayes

Bisson, Clark, Hillier.

Nays

Balkissoon, Brown, Brownell, Jaczek, Mangat.

The Chair (Mr. David Oraziotti): The motion is lost. Conservative motion number 127: Mr. Hillier.

Mr. Michael A. Brown: Motion 127 or 126?

The Chair (Mr. David Oraziotti): Motion 127.

Mr. Randy Hillier: I move that a new subsection be added to the bill as subsection 3(6) and that it state the following:

“3(6) Upon the tabling of the reports as stated in section 3(4) and section 3(5), the Legislature may vote to disallow the continued operation of all local forest management corporations.”

I believe, Chair, that that motion will now be out of order.

The Chair (Mr. David Oraziotti): Correct. It was dependent on the last one carrying, so this motion is out of order. You're correct, Mr. Hillier.

That's all of them for section 3. Shall section 3, as amended, carry? Opposed? Okay, the section is carried.

Section 4: There are no amendments. Shall section 4 carry? Carried.

Section 5, Conservative amendment 127.1: Mr. Hillier.

Mr. Randy Hillier: I move that paragraph 2 of section 5 of the bill be struck out and the following substituted:

“2. To provide for economic development opportunities for northern and rural communities.”

The Chair (Mr. David Oraziotti): Any further comment?

Mr. Randy Hillier: Again, I think it's a nice house-keeping measure that we demonstrate the objective of this legislation: that it's not just some wishy-washy future mandate; that this is to provide for economic development opportunities.

Indeed, the only way that we can be accountable is if we state objectives within the legislation. The way the bill reads right now is, “To carry out such other objects as may be prescribed by regulation.” We don't know what that is. Nobody here can hazard a guess as to what that actually is. When you have statements such as that, there is no way any government can be held to account.

The Chair (Mr. David Oraziotti): Any further comments? Okay, seeing none, Conservative motion number 127.1—

Mr. Randy Hillier: Recorded vote.

Ayes

Bisson, Clark, Hillier.

Nays

Balkissoon, Brown, Brownell, Jaczek, Mangat.

The Chair (Mr. David Oraziotti): The motion is lost. Conservative motion number 127.2: Mr. Hillier.

Mr. Randy Hillier: I move that section 5 of the bill be amended by adding the following paragraph:

“4.1 To positively impact the Ontario forest product sector.”

I'd like to see who's opposed to that statement.

The Chair (Mr. David Oraziotti): Any further comments?

Mr. Randy Hillier: No comment. Recorded vote.

Ayes

Bisson, Clark, Hillier.

Nays

Balkissoon, Brown, Brownell, Jaczek, Mangat.

The Chair (Mr. David Oraziotti): The motion is lost. Shall section 5 carry? Section 5 carries.

1700

Folks, just for your information, according to the order of the House, as of 5 o'clock all of the motions that are remaining before us are ordered read into the record and we'll proceed to vote on them in the order that they fall here.

There are no amendments in sections 6, 7, 8, 9, 10, 11, 12 and 13. Shall sections 6 to 13 carry? All those in favour?

Mr. Gilles Bisson: Recorded vote.

The Chair (Mr. David Oraziotti): A recorded vote has been called for on sections 6 through and including 13.

Ayes

Balkissoon, Brown, Brownell, Jaczek, Mangat.

Nays

Bisson, Clark, Hillier.

The Chair (Mr. David Oraziotti): Section 14, Conservative motion number 128. All those in favour of section 14, Conservative motion number 128?

Interjection.

The Chair (Mr. David Oraziotti): The Conservatives have motion 128. It's assumed read into the record, so if the government wishes to defeat it, they need to vote against the motion. All those in favour of Conservative motion 128?

Mr. Randy Hillier: Recorded vote.

The Chair (Mr. David Oraziotti): According to the standing orders, all of the recorded votes after 5 o'clock get bumped to the end of proceedings, and they'll get dealt with in the order. If you choose to do that for all of them, we'll be voting on a recorded vote for all of them.

So a recorded vote has been called for on 128.

Conservative motion number 129: All those in favour of Conservative motion number 129?

Interjection: Recorded vote.

The Chair (Mr. David Oraziotti): Recorded vote. Okay.

Mr. Randy Hillier: You're not allowed to read them into the record?

Mr. Bas Balkissoon: Not anymore.

The Chair (Mr. David Oraziotti): No, they're deemed read into the record.

Motion 130?

Interjection: Recorded vote.

The Chair (Mr. David Oraziotti): Recorded vote on 130.

Sections 15 through and including 27: There are no amendments proposed in 15 to 27. Shall those sections carry? Opposed? Those sections are carried.

Section 28, Conservative motion number 131.

Interjection: Recorded vote.

The Chair (Mr. David Oraziotti): A recorded vote's been called for.

Motion 132, Conservative motion—

Interjection: Recorded vote.

The Chair (Mr. David Oraziotti): Right. Motion 133?

Interjection: Recorded vote.

The Chair (Mr. David Oraziotti): Motion 134, Conservative motion.

Interjection: Recorded vote.

The Chair (Mr. David Oraziotti): Okay. Government motion 134.1. All those in favour?

Interjection: Recorded vote.

The Chair (Mr. David Oraziotti): Okay. Conservative motion 135.

Interjection: Recorded vote.

The Chair (Mr. David Oraziotti): Okay. Motions 136 through and including 142 are all Conservative motions. You wish recorded votes on all those?

Interjection.

The Chair (Mr. David Oraziotti): A recorded vote's been called for for motions 136 through and including 142. They're all Conservative motions.

Motion 143, a government motion. All those in favour?

Interjection: Recorded vote.

The Chair (Mr. David Oraziotti): Okay. Motion 144?

Interjection: Recorded vote.

The Chair (Mr. David Oraziotti): Okay. All of the other motions were withdrawn. That's it.

We'll go back to the recorded votes. A recorded vote has been called for for all remaining motions that are on the floor.

Section 14, Conservative motion 128.

Ayes

Bisson, Clark, Hillier.

Nays

Balkissoon, Brown, Brownell, Jaczek, Mangat.

The Chair (Mr. David Oraziotti): The motion's lost. Conservative motion number 129.

Ayes

Clark, Hillier.

Nays

Balkissoon, Brown, Brownell, Jaczek, Mangat.

The Chair (Mr. David Oraziotti): The motion is lost. Conservative motion number 130: A recorded vote has been called for.

Ayes

Bisson, Clark, Hillier.

Nays

Balkissoon, Brown, Brownell, Jaczek, Mangat.

The Chair (Mr. David Oraziotti): The motion is lost. Shall section 14 carry? A recorded vote has been called for. We deal with it right now.

Ayes

Balkissoon, Brown, Brownell, Jaczek, Mangat.

Nays

Bisson, Clark, Hillier.

The Chair (Mr. David Oraziotti): Section 14 is carried.

Fifteen through and including 27 have been voted on.

Conservative motion 131, section 28: A recorded vote was called for.

Ayes

Bisson, Clark, Hillier.

Nays

Balkissoon, Brown, Brownell, Jaczek, Mangat.

The Chair (Mr. David Orazietti): Okay, it's lost.
Section 28, Conservative motion number 132.

Ayes

Bisson, Clark, Hillier.

Nays

Balkissoon, Brown, Brownell, Jaczek, Mangat.

The Chair (Mr. David Orazietti): The motion is lost.
Conservative motion number 133.

Ayes

Bisson, Clark, Hillier.

Nays

Balkissoon, Brown, Brownell, Jaczek, Mangat.

The Chair (Mr. David Orazietti): Okay, continuing
on section 28: Conservative motion number 134.

Ayes

Bisson, Clark, Hillier.

Nays

Balkissoon, Brown, Brownell, Jaczek, Mangat.

The Chair (Mr. David Orazietti): The motion is lost.
Government motion number 134.1.

Ayes

Balkissoon, Brown, Brownell, Jaczek, Mangat.

Nays

Bisson, Clark, Hillier.

The Chair (Mr. David Orazietti): The motion is
carried.

Conservative motion number 135, recorded vote.

Ayes

Bisson, Clark, Hillier.

Nays

Balkissoon, Brown, Brownell, Jaczek, Mangat.

The Chair (Mr. David Orazietti): The motion is lost.
Conservative motion number 136.

Ayes

Bisson, Clark, Hillier.

Nays

Balkissoon, Brown, Brownell, Jaczek, Mangat.

The Chair (Mr. David Orazietti): The motion is lost.
Conservative motion number 137.

Ayes

Bisson, Clark, Hillier.

Nays

Balkissoon, Brown, Brownell, Jaczek, Mangat.

The Chair (Mr. David Orazietti): The motion is lost.
Conservative motion number 138.

Ayes

Bisson, Clark, Hillier.

Nays

Balkissoon, Brown, Brownell, Jaczek, Mangat.

The Chair (Mr. David Orazietti): The motion is lost.
Conservative motion number 139.

Ayes

Bisson, Clark, Hillier.

Nays

Balkissoon, Brown, Brownell, Jaczek, Mangat.

The Chair (Mr. David Orazietti): The motion is lost.
Conservative motion number 140.

Ayes

Bisson, Clark, Hillier.

Nays

Balkissoon, Brown, Brownell, Jaczek, Mangat.

The Chair (Mr. David Orazietti): The motion is lost.
Conservative motion number 141.

Ayes

Bisson, Clark, Hillier.

Nays

Balkissoon, Brown, Brownell, Jaczek, Mangat.

The Chair (Mr. David Orazietti): The motion is lost.
Conservative motion number 142.

Ayes

Bisson, Clark, Hillier.

Nays

Balkissoon, Brown, Brownell, Jaczek, Mangat.

The Chair (Mr. David Orazietti): Government
motion number 143.

Ayes

Balkissoon, Brown, Brownell, Jaczek, Mangat.

Nays

Bisson, Clark, Hillier.

The Chair (Mr. David Oraziotti): Carried.
Government motion number 144.

Ayes

Balkissoon, Brown, Brownell, Jaczek, Mangat.

Nays

Bisson, Clark, Hillier.

The Chair (Mr. David Oraziotti): That is carried.

Shall section 28, as amended, carry? All those in favour? Opposed? The section is carried.

That takes us to section 29. There are no amendments in section 29. Those amendments were withdrawn.

Shall section 29 carry? Opposed? It's carried.

Shall section 30 carry? It's carried.

Shall the title of the bill carry? Carried.

Shall Bill 151, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? Carried.

Thank you, folks.

Mr. Randy Hillier: Well, it's nice to give northern Ontario 40 minutes of our precious time.

The Chair (Mr. David Oraziotti): Committee is adjourned.

The committee adjourned at 1711.

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**Standing Committee on
General Government**

Committee business

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affaires gouvernementales**

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENT

Monday 9 May 2011

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Lundi 9 mai 2011

The committee met at 1402 in committee room 1.

COMMITTEE BUSINESS

The Chair (Mr. David Orazietti): Good afternoon, everyone, and welcome to the Standing Committee on General Government. We'll get started.

There is a notice of motion that has been filed by Steve Clark, MPP. Pursuant to standing order 126, I'll allow Mr. Clark to make comments with respect to the motion. Members of the committee will have an opportunity. I'd just recommend that, generally speaking, we try to divide the time relatively evenly between all of the members, or all of the caucuses, at about 10 minutes each, but understanding that members may want to have some dialogue in the process, so it might not be 10 minutes consistently or in one time allocation, I suppose.

I'll let Mr. Clark start off and open the floor. You need to just move the motion.

Mr. Steve Clark: Yes, I will. Thank you, Chair.

I would like to move that the Standing Committee on General Government investigate the impacts of higher energy rates as they pertain to mill closures in northern Ontario.

I want to reiterate what you said at the start of the committee, that I'll be using some of my time and I'll be reserving some of it, hopefully, for an open dialogue with other members of the committee. I regret that my colleague the member for Lanark-Frontenac-Lennox and Addington couldn't be here with me today. I know that he has been very concerned, as I have been, throughout our deliberations with the forest tenure act and also, prior to that, with the Far North Act. I wish he could have been here, but unfortunately, that's not an opportunity.

I think it's very important that we take time in this committee to talk about energy rates and prices as they deal with mill closures in northern Ontario. When we had the discussion about forest tenure, I almost felt like higher energy rates were the elephant in the room. We were so immersed in the fact that there had been consultation—the minister had made some comments in January about forest tenure; the bill came through. Unfortunately, we had essentially 40 minutes that was time-allocated to talk about that. There were still people and communities that wanted to be heard, and I can appreciate that the parliamentary assistant may have differing views than I do.

I'm a relatively new member—just elected last March. I can remember the excitement that some of the committee members had in our caucus about the Far North Act and the hearings that we would have had there and the fact that we were planning on having hearings for forest tenure. Notwithstanding the consultation that took place, the fact that we didn't go there was a disappointment for a number of groups.

I wanted to have a discussion today about energy rates. When you look at the fact that there have been over 60 timber mills closed and over 40,000 jobs lost in that industry since this government took office—we've heard a number of issues that have come forward, some that we've discussed as part of forest tenure, issues like access to fibre and tenure reform; we heard some talk about species at risk. But certainly the high energy prices at mills are something that all three parties, as it relates to northern Ontario, need to discuss. Certainly, that sector has been extremely hard-hit because of those hydro increases. Other policies that have been put forward are also a concern. And when we look at issues like Bill 191, that Far North Act that set aside additional lands, again, I think that we have to, as a committee and as legislators, bring forward some discussion.

One other point I want to make on Bill 151 that I think was an extreme disappointment for me was the fact that when the two pilots are completed, we don't have the opportunity for that debate to come back to the Legislative Assembly; that we as MPPs don't have that chance to discuss this. So I think it's important that we take, be it a half-hour, be it 10 minutes for each party, because I really do believe that the sector, which is extremely important for the north—the energy sector is something that we need to talk about.

The one thing that I heard loud and clear during the public debates, the discussions that we had at the hearing, from people that made deputations to us, was that when you talk about economic development in the sector, you need that certainty. I truly believe that by not having that discussion about our energy rates, by not having some dialogue between the three parties on the devastating impact that it has had on the forestry sector, I think we're doing our constituents a disservice.

I'm hoping that we'll have some discussions today. We need to put our minds and legislative resources to making this sector grow and flourish. We need to deal with some of the constraints that they've had and also move forward in a positive manner. I would love to hear

the comments from the government about the fact that we have lost over 60 mills and just the fact that there have been 40,000 jobs—a huge number—that have been lost in the sector over the last seven or eight years.

With that, Chair, I'll just put those comments forward. I look forward to responding to some of the comments that the other two parties will make. We'll continue this dialogue over the time that you've allotted us.

The Chair (Mr. David Orazietti): Does any other member of the committee wish to make comment on the motion? Mr. Hampton, go ahead.

Mr. Howard Hampton: I think this is timely, especially given the situation that you find now, and I think it's especially timely when you look at paper mills. Let me just give you a couple of examples.

Probably the most modern paper mill complex in Canada was located in Dryden, Ontario. It was a complex that had had, I think it's fair to say, over \$5 billion of new investment in about the last 15 years. Seven years ago, that complex employed 1,000 people. It was a saw-mill, pulp mill and two paper machines. It produced white paper. This is white paper. You use it in your photocopier, your computer copier—basically, office paper. That mill—the paper machines are now closed. It's gone from over 1,000 people working there to about 330. All it does now is produce pulp.

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The irony for the people who used to work there, though, is that if you go 150 kilometres to the south, to International Falls, Minnesota, at the directly competing mill, which also produces white paper, the two paper machines there continue to operate and they continue to employ about 500 people.

Another example: The Cascades mill in Thunder Bay produced what's called glossy coated paper. It's the kind of paper that if you went into your car dealership and saw these nice, glossy pictures of new cars, that's exactly the kind of paper they produced at Cascades. Cascades is now closed, with the loss of 500 jobs.

But again, I think, for people who used to work there, what sticks in their minds is that the directly competing mill in Grand Rapids, Minnesota, which is only about 200 kilometres away, continues to produce the same kind of glossy coated paper. The two paper machines there continue to run, and it continues to employ over 500 people.

Another example: The Smurfit-Stone mill in Thunder Bay produced packaging paper. It's the kind of packaging paper that you'd see in paper bags, or perhaps if you went to the Liquor Control Board store this weekend, you'd find sort of the brown cardboard that liquor bottles would come wrapped in. There was the Smurfit-Stone mill in Thunder Bay, which employed about 150 people, and then, just a little up the road was the Domtar mill, in Red Rock, which also produced packaging paper and employed about 350 people—altogether, about 500 people in those two packaging mills.

They are now closed, but 200 kilometres to the south, in Duluth, Minnesota, two paper machines continue to

operate which produce packaging paper, directly in competition with the mills that closed in Thunder Bay and Red Rock.

I can tell you, what people are increasingly asking is: Why are these operations closed here in Ontario—in this case, northwestern Ontario—but only 150 kilometres away, 200 kilometres away, 225 kilometres away, in the neighbouring state of Minnesota, the directly competing mills continue to operate, continue to sustain jobs. I think the thousands of people who have lost their jobs in this sector, many of whom now are really struggling, deserve an explanation.

There is a follow-on or knock-on effect of this. To a large degree, the economics of sawmilling depends on two things: (1) being able to sell your lumber, and (2) being able to sell your residual material. If you take a round log and you saw out two-by-fours, there's going to be some left over that you can't saw into two-by-fours. Typically, that gets chipped and it gets sent to paper mills or pulp mills and gets made into paper. Sawmill economics depends upon having a paper mill where you can send your residuals, your chips, and sell them; and being able to sell your lumber.

But if all the paper mills are gone, it very much affects sawmill economics and makes it that much more difficult for sawmills. That has been a knock-on effect. In the northwest, we now have one, two, three, four, five, six, seven—we now have, in Thunder Bay and west, seven sawmills that are closed. I would argue that part of the reason they're closed is because there is no paper mill to send your residual chips to. And if you can't sell your chips, even if you can sell your lumber, you can't make a profit.

The third thing that seems to be happening is that the pulp mills, while the paper machines are shut down, are running. But what the pulp mills seem to be doing—and my hometown is an example of this: The pulp mill is turning out pulp at a faster rate than ever before, but the pulp is increasingly being shipped to the paper mills in the United States, where the paper is now being made. What's involved there, though, is the export, literally, of thousands of highly skilled jobs. To run a paper machine, you have to have instrument mechanics, you have to have computer technicians, you have to have millwrights, you have to have pipefitters and you have to have machinists, and those are the jobs that are being lost.

To run a pulp mill—I mean, a pulp mill is essentially a big cooker. You take the wood fibre, you throw it in a big digester, you crank up the heat and you cook it. So it's essentially the semi-processing of the wood fibre, and the pulped wood fibre or cooked wood fibre is now being increasingly sent to the United States, where it's turned into paper.

I think people deserve an explanation as to why this has happened, because it has literally wiped out the economy of dozens and dozens of communities. If we think we can go from here without giving people an explanation of what's gone on, I think we're sorely missing the point and not doing our jobs.

The Chair (Mr. David Oraziotti): Thank you, Mr. Hampton. Further comment? Mr. Brown, go ahead.

Mr. Michael A. Brown: Well, I would be the last to disagree that energy prices have had an effect on the northern economy in general, and particularly on the forestry industry, whether it be sawmilling, pulp and paper or any of the other products we may gain from the forest. What I think about this motion, however, is that it is extraordinarily narrow in its focus. One might think that a 40% appreciation of the Canadian dollar, or perhaps even a 50% appreciation of the Canadian dollar over this period of time, may have made our products, in general, that much more expensive. It may have at least some small explanation as to what is going on here.

The government has responded to the large industrial users of electricity, for example, in northern Ontario with the northern pulp and paper electricity transition program, which disbursed \$123.9 million in electricity relief to major mills in Ontario. The northern industrial energy rate program, the new program, is \$150 million annually over three years to assist the pulp and paper industry in managing their expenses and finding new and interesting ways to do things.

But I might want to point the members to some of the good news that's happening in the forest industry today. I was pleased to be with the Minister of Northern Development, Mines and Forestry in Sault Ste. Marie, at an event that my colleague Mr. Oraziotti chaired, when we announced a wood allocation to a company called Rentech. Rentech is a company based in California that has a technology that, amongst other things, converts biomass into aviation fuel.

This is an exciting project. It will mean an investment in the community of White River in the hundreds of millions of dollars—hundreds of millions of dollars. It will create, over the two years it'll be under construction, about 1,000 jobs in the construction sector alone in the small community of White River. It will have regional impact on places like Wawa, Hornepayne and Dubreuilville. It is exciting—Marathon will also be a beneficiary. It's a partnership between Pic River First Nation and the company, Rentech.

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It is exciting in that aviation fuel from biomass is something that is going to be increasingly in demand. The EU has regulations which will mean that the planes flying into the EU have to have a certain percentage of biomass or low-carbon fuel in their tanks. The company, Rentech, that is, has already spoken to—we probably will hear some announcements in the near future—some of the major airlines that have shown great interest in this. So some of the energy increases that we've seen are also good things for our economy, because it would be hard to believe that, without some increase in price, this product would be viable in the world.

I am very excited about this project. There are others. The member for Sault Ste. Marie—for example, St. Marys Paper has just been awarded a contract by the

OPA for a 30-megawatt biomass plant which will help sustain St. Marys Paper with a source of energy of their own, and they will be able to sell excess into the grid. That's a very important part of our new industrial complex. We need to look forward. We need to look to a different mix in the forest industry from the one we've had before. It just seems like what we need to do or we will follow the cycle of boom and bust in forestry, as we often do in mining; it's part of the northern experience, and what we can do to change that is to make sure that our industries are as insulated as possible from world events.

Mr. Hampton talked about softwood lumber. He's right; I don't argue with him. But one of the major problems with softwood lumber has been a huge decline in our major market. Our major market is the US. The US, in case no one on this committee has noticed, has lost thousands and thousands and tens of thousands of housing starts, which means they're not consuming the kind of softwood lumber they would in normal times. That market has yet to recover.

One of the problems is price point. Mr. Hampton points to how mills in northern Minnesota have an advantage. Sure they do; they have a 40% to 50% dollar advantage. They can buy our products for 40% or 50%—the raw material from us, the pulp; it's not totally raw material, but the pulp, and transform it in Minnesota far less expensively. It is just a reality. Those are issues I think we should address. We need to have a look at how we might go forward on those issues.

To narrow this to electricity is only one component of a major problem, and we need to think out of the box; we need to think of companies like Rentech that are providing and will provide huge opportunities for northern Ontario people, and will be sustainable over time. Not anyone in this room, or probably in this province, believes that energy prices for petroleum products are going to go down significantly in the near future. The opportunity for companies that will provide alternative fuels to that seems very apparent.

What I'm suggesting to members is that we won't be supporting this because of the focus of it. The focus is on one small part. We look to our sister province of Quebec, which has amongst the lowest electricity rates in the world, I would say. Why do they have that? Because of their abundance of hydroelectricity from the James Bay projects. That's why. They built those 25 years ago, or whatever time frame it is; they have a huge surplus, inexpensive electricity, and they have lost more forest workers and more mills than the province of Ontario.

So to make the issue all about electricity, I think, is a mistake, I would say to my friend from eastern Ontario. It is about a lot of factors. Electricity is a component; nobody argues that, but to talk about it in isolation from all the other things going on in the economy, the government thinks, I think and northerners think is the wrong approach. The right approach, if we are to move forward, would be to have a look at the entire sector, the eco-

nomics of the entire sector; to look at ways to move us forward. Companies like Rentech, companies that will see future markets in a sustainable way that will keep us and our people employed in northern Ontario, provide real value-added and will not be dependent upon governments doing this, that or the other thing. They will be able, in a free-market situation, to do extraordinarily well. I'm very pleased that we're doing as we have done as a government: trying to move us on to a new generation of forest products while sustaining those in the old industry—the traditional industries would be the way to say it, I guess—that have opportunities.

I represent Espanola; the Domtar mill in Espanola has not missed a shift through all of this. They have done it because of their ability to be self-sustaining in energy, their concentration on products the world wants to buy and their concentration on being able to change products so they can do relatively small orders economically. They have certainly experienced their challenges but have been able to do those kinds of things.

I think we need to think about competitiveness. We need to think about the future. We need to think about this resolution in the context of all those other factors. So I appreciate Mr. Clark bringing this to us because it's important. I'm not arguing it's not important. But it's only one small piece of a very large puzzle.

The Chair (Mr. David Oraziatti): Mr. Clark, you've got a couple more minutes if you want.

Mr. Steve Clark: Again, I just appreciate the comments that were made, and I especially want to thank Mr. Hampton for his comments about sawmill economics. It's important.

Regardless of how many jobs have been lost in Quebec or the operations that, for example, Mr. Hampton talked about in Minnesota, we've lost a significant amount of jobs in the forestry sector. When I looked at the figures and saw that—I said it was over 60; it's probably closer to 70 mills that have closed in the last several years. I can appreciate that there are a number of factors, but my God, if we're going to look at a different mix, surely to goodness, some of these operations—energy prices are definitely a factor. We heard a lot of issues during Bill 151 and Bill 191.

I just think we're doing a disservice to the people of the north by not working harder and not doing a better job. To use the comments from my friend Mr. Hampton, people deserve an explanation. For us to sit here and have those two discussions on those two bills and not talk about the importance of energy prices and the fact that it is such a critical issue to the forestry sector, I think, again, we're doing our constituents and the people of Ontario a disservice. There still is uncertainty in the sector. I think that we need to do a better job.

The Chair (Mr. David Oraziatti): Mr. Clark, that's your time. Mr. Hampton, you have a couple of minutes if you'd care to wrap up.

Mr. Howard Hampton: I think what we're in danger of missing here is this: No one disagrees that the de-

preciation of the American dollar may have a negative effect on the forest sector going forward. The closures we're concerned about are the closures that have happened in the last couple of years, before there was significant depreciation in the value of the American dollar.

When Cascades closed their mill in Thunder Bay, they issued a press release, and they were very clear. They said, "The cost of electricity is too high for us to continue producing in Ontario."

When Abitibi closed their Mission mill in Thunder Bay, they issued a press release saying, "The cost of electricity is too expensive for us to continue producing in Ontario."

When Domtar shut down their two very new, very modern, large, high-speed paper machines in Dryden, they issued a press release saying, "The cost of electricity is too high. We can run the pulp mill because the cooking process doesn't run on electricity—it runs on natural gas—but running paper machines is too expensive."

When Abitibi closed their three paper machines in Kenora, seven years ago now, they were very clear. They issued a press release. They said, "The cost of electricity in Ontario now and projected into the future is too high for us to continue making paper in the province."

When you talk with folks at the Dryden complex and you point out to them that the white paper mill in International Falls, Minnesota, only 150 kilometres away, continues to make white paper, they say, "Look, their electricity rates which power their paper machines are a lot less than ours." Similarly for the coated paper mill in Grand Rapids, Minnesota, and similarly for the packaging mills in Duluth, Minnesota: Their electricity rates are just a lot lower than ours.

Companies can hedge against the valuation and devaluation of currencies; they do that all the time. They have all kinds of ingenious mechanisms for hedging, such as buying ahead and so on. These companies, many of which have been in the business for decades, do that all the time. What they're saying they cannot do is, they cannot stay in business when their costs of production are constantly rising because of the cost of electricity, which is the prime mover of their paper machines.

Quebec, yes, has lost some jobs, but I invite you to go to the website of any one of these companies, whether it's Domtar, Abitibi, Cascades or Kruger. What you'll find is that they're operating far more paper machines in Quebec and far more paper machines in the United States than they're operating in Ontario now. In my part of the province, seven years ago we had three operating paper machines in Dryden and three in Fort Frances—that's six; two in Dryden is seven and eight; three at Cascades is 11; two at Red Rock is 12 and 13; one at Mission is 14; and three at the AbitibiBowater mill—what are we up to now, 18?—and one at the Smurfit-Stone—

The Chair (Mr. David Oraziatti): Your time is—

Mr. Howard Hampton: —and we're now down to three paper machines. I think people deserve an explanation on that.

The Chair (Mr. David Oraziatti): Thanks. We appreciate you wrapping up.

Folks, that's all of the time by all of the parties used for the motion. Mr. Clark's motion is on the floor. I assume you will want a recorded vote?

Mr. Steve Clark: Yes.

Ayes

Clark, Hampton, Ouellette.

Nays

Brown, Brownell, Kular, Levac, Mangat.

The Chair (Mr. David Oraziotti): The motion is lost. Thank you, members. That's committee business for today.

The committee adjourned at 1432.

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**Assemblée législative
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**Official Report
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(Hansard)**

Monday 16 May 2011

**Journal
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Lundi 16 mai 2011



**Standing Committee on
General Government**

**Fire Protection and Prevention
Amendment Act, 2011**

**Comité permanent des
affaires gouvernementales**

**Loi de 2011 modifiant
la Loi sur la prévention
et la protection contre l'incendie**

Chair: David Oraziotti
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Monday 16 May 2011

Lundi 16 mai 2011

The committee met at 1404 in room 151.

SUBCOMMITTEE REPORT

The Chair (Mr. David Orazietti): Good afternoon, folks, and welcome to the Standing Committee on General Government. Our first order of business is the subcommittee report.

Mr. Levac, go ahead.

Mr. Dave Levac: Your subcommittee met on Wednesday, May 11, 2011, to consider the method of proceeding on Bill 181, An Act to amend the Fire Protection and Prevention Act, 1997, and recommends the following:

(1) That the committee meet in Toronto on Monday, May 16, 2011, for the purpose of holding public hearings.

(2) That the committee clerk, with the authorization of the Chair, post information regarding public hearings on the Ontario parliamentary channel and the Legislative Assembly website.

(3) That interested parties who wish to be considered to make an oral presentation contact the committee clerk by 10 a.m. on Monday, May 16, 2011.

(4) That witnesses be offered 10 minutes for their presentation, and that witnesses be scheduled in 15-minute intervals to allow for questions from committee members.

(5) That witnesses be scheduled on a first-come, first-served basis.

(6) That the deadline for written submissions be 5 p.m. on Monday, May 16, 2011.

(7) That the research officer provide the committee with a summary of presentations.

(8) That amendments to the bill be filed with the clerk of the committee by 5 p.m. on Tuesday, May 17, 2011.

(9) That the committee meet for the purpose of clause-by-clause consideration of Bill 181 on Wednesday, May 18, 2011.

(10) That the committee live-stream the public hearings on the Legislative Assembly of Ontario's website.

(11) That the committee clerk, in consultation with the Chair, be authorized prior to the adoption of the report of the subcommittee to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

The Chair (Mr. David Orazietti): Thank you very much, Mr. Levac.

Comments or questions on the subcommittee report? Seeing none, all those in favour? The motion is carried.

FIRE PROTECTION AND PREVENTION
AMENDMENT ACT, 2011LOI DE 2011 MODIFIANT
LA LOI SUR LA PRÉVENTION
ET LA PROTECTION CONTRE L'INCENDIE

Consideration of Bill 181, An Act to amend the Fire Protection and Prevention Act, 1997 / Projet de loi 181, Loi modifiant la Loi de 1997 sur la prévention et la protection contre l'incendie.

ASSOCIATION OF MUNICIPALITIES
OF ONTARIO

The Chair (Mr. David Orazietti): The first presentation is the Association of Municipalities of Ontario. Good afternoon, gentlemen. You have 15 minutes for your presentation, as you know. Any time you do not use will be divided among committee members for questions. Start by stating your names for the purposes of our recording Hansard, and you can begin.

Mr. Peter Hume: Thank you very much, Mr. Chairman. My name is Peter Hume, and I am president of the Association of Municipalities of Ontario and a councillor in the city of Ottawa. Beside me is John Saunders of Hicks Morley, AMO's legal adviser on fire labour relations.

We all understand and appreciate the value of fire protection in our communities and the committed firefighters who work to keep our communities safe.

As employers for all emergency services, we have a role in their health and safety. As individuals and as professionals, employees have a role to make sure they are strong and healthy to be able to carry out their responsibilities.

I want to set some context before making specific amendment requests to the bill in question. There are approximately 11,000 full-time, 220 part-time and 19,000 volunteer firefighters providing fire services in 444 municipalities. There are 31 career full-time fire departments, 171 composite fire departments with at least one

full-time employee and 266 volunteer services with no full-time employees.

Although we understand that full-time firefighters serve approximately 80% of the Ontario population, you need to understand that composite and volunteer fire departments cover the geographic majority of the province in rural and northern Ontario. The usual composite situation is unionized full-time and non-union volunteers, but in Hamilton, for example, the volunteers are unionized.

This information demonstrates the diversity of municipal fire services throughout Ontario. This wide-ranging diversity needs to be a key consideration for the drafting and consideration of any legislation so that you, as legislators, do not create unintended consequences.

Having provided some context, I'd like to remind you of the genesis of Bill 181. It started as a private member's motion that received all-party support on March 10, 2011. The motion as debated reads: "That, in the opinion of this House, the Legislative Assembly of Ontario, in recognition of the role Ontario's firefighters play every day in keeping our communities safe, and in recognition of the evidence of health and safety risks to firefighters over the age of 60, and in keeping with recent Human Rights Tribunal decisions, calls on the government to introduce legislation allowing for the mandatory retirement of firefighters who are involved in fire suppression activities in the province of Ontario."

All members in the House supported the motion during the debate, and it passed unanimously, 36 to 0. But there are several differences between the motion, as adopted, and this bill.

First, the motion says "mandatory retirement"; the bill says "mandatory retirement" but also the right to ask for accommodation to work past 60. Now, we understand that part of the premise of the proposed across-the-board 60 years is health and safety reasons. It is our view that there is limited evidence that there is a health and safety risk at age 60, due to the unique physical and hazardous work of firefighters who are regularly assigned to fire suppression activities. Why at 60? The entire premise of mandatory retirement was struck down, as people are not homogenous and it was determined that it was therefore discriminatory.

Why is this legislation trying to reconstitute a practice that society really has moved away from? One of our questions is why this cannot be left to the collective bargaining process, which reflects the local situation and local circumstances for both the firefighters and the employer.

We also understand it has been asserted that this proposed legislation will reduce litigation and the associated costs of lawsuits. We do not concur that by making these changes to the act without amending the Ontario Human Rights Code this bill will stop cases from proceeding to the Human Rights Tribunal. In fact, subsection 53.1(4) creates a classic Catch-22 for municipalities. The legislation says, on one hand, that 60 shall be established as the retirement age and shall be read into collective agree-

ments, if not stated in those agreements in the next two years. However, the same proposed legislation states: "An employer shall not require a firefighter to retire if the employer can accommodate the firefighter without undue hardship, considering the cost, outside sources of funding ... and health and safety requirements, if any."

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This proposed legislation is looking to establish a mandatory retirement age of at least 60 for full-time firefighters, primarily using a health and safety rationale, and then says to the municipal employers that we should accommodate any full-time firefighter 60 or over who wishes to continue unless we can prove that there are, in part, health and safety reasons not to accommodate. This strikes us, as we hope it does you, as a bit of a circular argument.

While some will point out that it is unlikely that all full-time suppression firefighters in a given service will want to be accommodated post-60, even a small handful will test the employer's ability. No municipality will be able to afford to create or to do the training to accommodate that firefighter into a fire prevention, fire training or communications position. It would mean that the full-time firefighter would need to be accommodated in a non-fire service position within a different bargaining unit, most likely at reduced wages and benefits. This, in turn, would have a negative impact on other, younger municipal employees as the duty to accommodate the firefighter prevails over their other desires.

In our reading of the proposed legislation, it appears that only the municipality has a role in the accommodation process and that the Ontario Professional Fire Fighters Association, or other union representative, and the individual firefighter do not. If passed, it is our view that it is likely that this provision may provoke additional labour relations issues that a municipality will need to fund from their property taxes. In our view, this section of the drafted legislation could potentially create more challenges.

Therefore, we would like to propose an amendment to Bill 181: that subsection 53.1(4) be deleted from this legislation, as either the legislation will require full-time firefighters to retire at a specific age or it will not. It cannot say, as it does now, that there is mandatory retirement unless a firefighter doesn't want to.

Second, the bill addresses firefighters as defined in part IX of the act, that is, full-time firefighters who have collective agreements under this act. This is a good thing from an operational perspective, and I'll tell you why: because over 6% of the 19,000 volunteer firefighters are over 60 years of age. With respect to the senior officers in the municipal fire services, it is estimated that about 11% of the management and leadership in volunteer fire departments are over 60 years of age.

We have been advised that several northern volunteer fire services would be completely eliminated if this legislation were to apply to volunteer firefighters. Additionally, other rural, northern composite and volunteer fire services would be impacted severely if their volunteer

firefighters were also expected to retire from their volunteer fire service. On a practical and operational level, most rural, remote and northern communities cannot afford to lose 1,100 volunteers, neither from a community safety perspective nor from trying to find new volunteers and from the investment in volunteer training.

While suppression is suppression, the amount and type of suppression activity varies, not just between communities but even between fire stations in urban areas. AMO, while representing municipal employers, cannot support the idea that this legislation should apply to volunteer firefighters and thereby knowingly put Ontario communities and their residents in danger by removing their ability to have a viable volunteer fire service to protect them. We told the ministers this during the consultations, and we're pleased that they have listened.

The bill also makes amendment with respect to the duty of fair representation. We do not oppose the principled direction of the proposed legislation to have a firefighter's complaints about their representation by a fire association go before the labour relations board rather than through the courts. However, we do take issue with part of the remedial powers of the labour board under subsection 46.2(5).

The purpose of a duty-of-fair-representation provision is to address failures of the bargaining agent, the union. Subsection 46.1(1) states that the "bargaining agent ... shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the firefighters...." This legislation says nothing about the obligations of the employers.

Section 46.2 then sets up a process of inquiry into the failure of the bargaining unit to comply with its DFR obligation. Again, nothing about what the employer did correctly or incorrectly. Subsection 46.2(5) then sets out the remedies that the labour board can order when it determines that the bargaining agent has violated its DFR.

We have no issue with the powers that are found in (a), (b) and (c). They are appropriate in the circumstances. Our issue is with regard to clause 46.2(5)(d). It requires the employer to reinstate and compensate a firefighter when the Labour Relations Board has determined the union has failed to fulfill its duty to fairly represent a firefighter. It is unfair that the employer could be ordered to compensate a firefighter as part of a remedy ordered should a union be found by the board not to have acted appropriately. As such, we would propose that this section be deleted in its entirety. Municipalities should not be held liable for actions of the unions.

From a practical point of view, these types of remedial powers exist for rights arbitrators who would be appointed should the labour board find the union has breached its duty of fair representation. For example, if a municipality had terminated a firefighter and the union refused to process the grievance of that termination to arbitration on behalf of that firefighter, the firefighter could claim to the labour board that the reason the union failed to process that termination grievance was because

the union behaved in an arbitrary, discriminatory or bad-faith manner.

If the labour board agreed with the firefighter that the union had violated its duty of fair representation, then it would order the union to process the grievance against the municipality. The rights arbitrator who would then be appointed to hear and determine that termination grievance would have all of the remedial powers currently available to them in the labour board's existing authority that are found in clause 46.2(5)(d) of the proposed bill. As such, we would propose that clause 46.2(5)(d) be deleted.

The health and safety of our firefighters is and always will be a concern for municipalities. They cannot provide the level of safety and security to communities if they themselves are not at their best. Firefighters are entering the service at 28 years of age—in the past, the entry age was much younger—so the current average age of retirement—57—could in fact become higher. Long shifts and more time off do provide greater opportunity for secondary employment, which may also impact the health of firefighters.

In summary and from our perspective, we do not see any particular merit or upside for municipal employers in this legislation. Although we understand that reducing litigation may also have been a driver for this proposed bill, it is our view that it may actually generate additional labour relations activity for the employer.

Should this bill pass, we will be monitoring litigation action closely, and if our prediction is correct, we will be back with a motion for all-party support, seeking relief for our property taxpayers from this legislation.

In conclusion, we're asking for subsection 53.1(4) to be deleted and, with respect to DFR, we are also asking for clause 46.2(5)(d) to be deleted.

We appreciate your consideration of AMO's presentation and our suggested amendments. I would be happy to respond to any questions, if there's available time.

The Chair (Mr. David Orazietti): We have a brief minute or so. Ms. Savoline, go ahead.

Mrs. Joyce Savoline: Peter, nice to see you.

Mr. Peter Hume: Nice to see you.

Mrs. Joyce Savoline: I have a couple of questions. First of all, how many municipalities are actually aware of this going forward, that have expressed something to AMO?

Mr. Peter Hume: I don't know that we can answer how many are—

Mrs. Joyce Savoline: So you haven't had a board discussion about this?

Mr. Peter Hume: This has not been something that has been long in the debate and discussion. It came upon us, as you can appreciate, rather quickly.

Mrs. Joyce Savoline: Okay. Two other very quick questions: Has this gone to the MOU table?

Mr. Peter Hume: Yes, it was before the MOU table.

Mrs. Joyce Savoline: Has any costing been done? I know we can't put exact dollars and cents to it, but have you guys done any costing as to what this might cost

municipalities? Are we talking about \$2 million or \$25 million or \$80 million or—

Mr. Peter Hume: That's part of the problem; we don't know what it would cost us. We know that Toronto, who will be presenting later, may have some idea of what effect it would have on their service, but province-wide, we don't.

Mrs. Joyce Savoline: But it's clear to say that the province has not offered up any provincial money to cover the costs of the consequences of this legislation.

Mr. Peter Hume: No, it hasn't.

Mrs. Joyce Savoline: Thank you.

The Chair (Mr. David Oraziotti): Thank you. That's time for questions and time for your presentation. We appreciate you coming in today.

Mr. Peter Hume: Thank you.

ONTARIO PROFESSIONAL FIRE FIGHTERS ASSOCIATION

The Chair (Mr. David Oraziotti): Our next presentation is the Ontario Professional Fire Fighters Association. Good afternoon, gentlemen.

Mr. Fred LeBlanc: Good afternoon.

The Chair (Mr. David Oraziotti): As you're aware, you've got 15 minutes for your presentation, and any time you do not use will be divided for members of the committee to ask questions. You can start by stating your name, and proceed when you're ready.

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Mr. Fred LeBlanc: Okay. Good afternoon. I'd like to thank the committee for this opportunity to address you regarding Bill 181, the Fire Protection and Prevention Amendment Act, 2011.

My name is Fred LeBlanc and I'm the president of the Ontario Professional Fire Fighters Association. With me today is Mark McKinnon, our executive vice-president.

This act addresses two major legislative priorities of the OPFFA, those being mandatory retirement and the duty of fair representation.

The OPFFA represents approximately 11,000 professional full-time firefighters across Ontario who perform a variety of roles within the fire service. Our members are represented through 80 locals that are chartered through the International Association of Fire Fighters. Relying upon the most recent census data, our 77 municipal locals respond to the needs of approximately 81% of Ontario's total population.

I'd like to begin my presentation with the duty-of-fair representation section of Bill 181. Ironically, DFR makes up the majority of this legislation; however, it has generated very little debate among the stakeholders or within the Legislature.

The Fire Protection and Prevention Act currently contains limited references to the Labour Relations Act. The FPPA is silent on the issue of duty of fair representation, which is common to most other unionized employees across Ontario. We have had firefighters apply to the Ontario Labour Relations Board only to find out that

they have no jurisdiction to hear their DFR complaint. Therefore, the only mechanism by which DFR complaints can be pursued by firefighters is through the civil courts, which can be very expensive and time-consuming to the firefighter, the local association and, at times, the employer.

There has been some limited history of DFR cases brought forward to the courts, but generally, they have emanated from larger locals, which presumably have a larger number of members, who can collectively finance such action. To date, we're not aware of any local being found guilty of a failure in their duty of fair representation.

However, we are now seeing a trend where members are applying to the Ontario Human Rights Tribunal for complaints that are clearly DFR matters and should be within the jurisdiction of the OLRB. While I'm confident that our local representatives conduct themselves in a manner consistent with the principles outlined in our brief and by the Supreme Court of Canada, and with the highest regard for their members, we recognize that a proper dispute resolution mechanism is warranted.

The Ontario Labour Relations Board is the expert body to deal with labour relations matters and has a great depth of knowledge and experience dealing with DFR cases. Issues arising from DFR claims should not proceed before a forum that does not possess the required expertise in the administration of collective agreements or union constitutions. Bill 181 addresses this concern by importing the OLRB process for dealing with DFR claims into the FPPA and has recognized any necessary modifications.

We recognize that moving to this process may increase DFR claim volume in the firefighter community, at least initially; however, it will ultimately and significantly reduce the financial burden associated with these claims under the current situation. This also puts unionized firefighters on a level playing field with other unionized workers across Ontario.

Bill 181 calls for an implementation date of December 1, 2011, for this section, which allows the OPFFA the opportunity to educate our membership and local leadership on any new process.

Now I'd like to address the mandatory retirement provisions, where much of the focus during second reading debate in the House, throughout the media and with the other fire service stakeholders has taken place.

When the government abolished mandatory retirement in 2005 under Bill 211, the OPFFA sought an exemption allowing for mandatory retirement to still be applied to firefighters, as defined in part IX of the FPPA, at age 60. The government did not support this exemption and instead maintained a mandatory retirement provision where a bona fide occupational requirement, or BFOR, exists.

Prior to this legislative amendment, firefighters in Ontario either relied upon contract language, municipal bylaws or the previous language of the Human Rights Code, which allowed for mandatory retirement.

Currently, two thirds of the collective agreements covering firefighters working for municipalities contain

language providing for mandatory retirement at age 60, with the exception of two contracts which provide for age 65. The remaining contracts have no language.

Since Bill 211's passage, we have had numerous firefighters raise challenges against their mandatory retirement provisions. Seven cases have now reached the Ontario Human Rights Tribunal. You'll see in the summary of these cases in our brief that the *Espey v. London* case handed down in December 2008, which can be found in the first half of our brief, plays a pivotal role in mandatory retirement for firefighters. You'll see this issue was thoroughly reviewed in this case, and Mr. David Wright, the tribunal's adjudicator, found that the collective agreement did not violate the Human Rights Code and thus supported mandatory retirement for all firefighters involved with emergency responses.

This conclusion was reached based on the following: extensive medical testimony and evidence; a collective agreement structure whereby the parties determined that mandatory retirement would apply evenly; and a pension scheme which provides unreduced pensions under these early retirement scenarios.

The concept of establishing a test for firefighters to determine their ability to continue work was discussed during this case. I've provided the tribunal's conclusion and I draw your attention to the highlighted section, where it's clear that there is no definitive test for this determination.

The Ontario Human Rights Commission did launch a reconsideration application which was dismissed on March 12, 2009, and that dismissal can be found at the second tab of our brief.

The *Espey* case reinforced the 1986 landmark decision by the Ontario human rights board of inquiry, which considered the same matter involving firefighters of varying ranks in St. Catharines, Waterloo and Windsor, and held that mandatory retirement at age 60 was bona fide in its application in all cases. I've also included the conclusion from this case, and again I draw your attention to the highlighted areas.

As you can see from the conclusions, these two cases extensively reviewed both impressionistic evidence regarding how the fire service operates, as well as medical evidence. Yet despite the 22-year gap in these decisions and the various advances in medical technology, the result is the same: Mandatory retirement is bona fide and there is no individual testing that can be supported.

When the Legislature passed Bill 211, it clearly assumed there would be necessary exceptions to the concept of ending mandatory retirement. Beyond requiring the burden of proof regarding a BFOR, the exceptions are listed under section 24 of the current code. Establishing a BFOR is done on a case-by-case basis, and we have witnessed the enormous financial burden on both the municipality and the local association of challenging these claims. While we encouraged our locals to defend their contract language and collectively we provided some financial support for the medical evidence and legal costs associated with defending their contracts before the

tribunal, we have also been directed by convention action to advocate for the legislative change before you today.

After MPP Mike Brown's motion passed unanimously in the Legislature on March 10, the OPFFA reviewed the impacts of a blanket application of age 60 for firefighters involved in suppression activities. How any proposed legislation defines "firefighters" will, in itself, define how broad the impact may be. Bill 181 utilizes the definition found in part IX of the FPPA, which applies essentially to the full-time sector. Based purely on a health and safety argument, mandatory retirement could be applied across the entire fire service, at least to the first responders within the service. However, it is important to note that in the *Espey* decision, the tribunal supported their conclusion based on more than medical evidence insofar as the support within the collective agreement and the structure of the pension plan.

As we have heard from the volunteer firefighter representatives, a more cautious approach should be applied to the volunteer sector regarding the concept of mandatory retirement, as it may have unintended consequences.

Bill 181 properly narrows the focus to those regularly assigned to suppression activities. The term "suppression" is synonymous with emergency response activities and is common in the vernacular within the firefighter community. Referring to those regularly assigned appropriately defines those who should be captured by this legislation. It takes in the obvious suppression divisions in full-time departments, and we expect that those firefighters who, for example, are training officers yet regularly respond to emergency calls in a suppression capacity would also be included for this purpose.

As well, the incident commander role, which may be argued by some as not hands-on firefighting, was thoroughly reviewed in the *Espey* case as Mr. *Espey* was a district chief and performed the role of an incident commander. I draw your attention to the highlighted area of paragraph 77 of the tribunal's decision, which addresses this issue.

Bill 181 supports and encourages local negotiation of this matter, thus reflecting the current reality for over 90% of the OPFFA members who are governed by a collective agreement with mandatory retirement language. It also importantly introduces consistency to the concept of mandatory retirement within the fire service by including the deeming provision for those areas without contract language, yet allows two years in which to negotiate the matter.

Drafting the legislation in this manner does not threaten our members' pensions. The current average age of retirement for professional firefighters in Ontario is 57. Under our pension plan, there are three ways to retire with an unreduced pension, as outlined in our brief. Allowing for local negotiations permits the parties to match their mandatory retirement age in the collective agreements with the respective pension rate, thus ensuring that no member has a penalized pension as a result of this legislation.

As well, this legislation appropriately continues the current obligation regarding the duty to accommodate

without undue hardship on the employer and the association. Accommodating firefighters has been utilized effectively in a number of cases dealing with this issue, where a firefighter wishes to remain working but the employer has removed them from the emergency response or suppression division.

In conclusion, the OPFFA strongly supports the passage of Bill 181. It addresses two major legislative concerns for our organization; it supports collective bargaining, allowing the parties to address their local needs; it will significantly reduce costly and unnecessary Human Rights Tribunal processes for both mandatory retirement and DFR cases; it will support a strong delivery of fire services by removing the reliance on older firefighters in a highly physical and stressful occupation; and we believe it also mitigates WSIB liabilities for the employers by removing firefighters who may be more prone to cardiac events from emergency response and limiting a firefighter's exposure to toxic environments.

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The OPFFA strongly believes that this legislation reflects good public policy. We appreciate the all-party support illustrated to date and we applaud the government for introducing this bill.

That concludes our presentation, and we'd be pleased to address any questions that the committee may have.

The Chair (Mr. David Oraziotti): Thank you very much for your presentation. Ms. DiNovo, if you have any questions, go ahead.

Ms. Cheri DiNovo: Thank you, Mr. Chair, and thank you, Mr. LeBlanc, for your presentation. Certainly, as you know, the New Democrats are in favour of this legislation. We have been pretty upfront about that.

We just heard some testimony, however, from AMO. You didn't have time in your presentation to address that, and I wanted to give you a little bit of that time, maybe. Could you address some of their concerns, perhaps?

Mr. Fred LeBlanc: I think one of the concerns they raised was on the accommodation: that the language was potentially not as clear as it could be under Bill 181 and that the obligation should be on the firefighter, the union and the employer equally, as it appears in the current Human Rights Code. We have no problem with that. That's how we read the legislation and that's how we would conduct ourselves.

Ms. Cheri DiNovo: Okay. What about the cost?

Mr. Fred LeBlanc: The cost? We don't believe that there will be a cost to this legislation. In fact, we believe there will be savings for municipalities, not only, as I identified, in mitigation of some outstanding WSIB liabilities for potential exposure and heart attack presumptive legislation concerns. When you remove older employees from the workplace and you're hiring new employees, typically in a fire service structure they come in at a lower wage, with lower vacation and benefit entitlement etc. So we believe that there will be savings.

Ms. Cheri DiNovo: So your response, really, about the cost is that it'll balance out in terms of cost of—

Mr. Fred LeBlanc: In fact, I think there will be savings for the municipality.

Ms. Cheri DiNovo: Okay. Thank you very much.

The Chair (Mr. David Oraziotti): Mr. Berardinetti, go ahead.

Mr. Lorenzo Berardinetti: Thank you, Mr. Chair. Nice to see you, Mr. LeBlanc and Mr. McKinnon.

AMO said that people coming into the firefighter workplace are older rather than younger: like at 28. They do their period of time as a firefighter before they can retire. Is there any evidence that firefighters are coming on board later to start their careers?

Mr. Fred LeBlanc: Through our pension plan, we've received a recent report that outlined the average retirement age as being 57. But also, the entry age is 28, as AMO has identified. As I identified and you'll see in our brief, there are three ways to leave our pension plan with an unreduced pension. One is 30 years of service, so 28 would still put you at 58; leaving at your normal retirement age, whether that be age 60 or 65, still allows a 30- to a 32-year career, which is a fairly significant career.

Mr. Lorenzo Berardinetti: One last quick question, if I can, Mr. Chair. So is it fair to say it's that the best thing to proceed forward with this legislation; that it's in the best interests of the firefighters and also in the best interests of community safety?

Mr. Fred LeBlanc: Yes, absolutely. As I said, we believe that this legislation reflects good public policy.

Mr. Lorenzo Berardinetti: Thank you.

The Chair (Mr. David Oraziotti): Thank you very much, gentlemen. That's time for your presentation. We appreciate you coming in today.

TORONTO PROFESSIONAL FIRE FIGHTERS' ASSOCIATION

The Chair (Mr. David Oraziotti): Our next presentation is the Toronto Professional Fire Fighters' Association. Good afternoon, gentlemen. Welcome to the Standing Committee on General Government. As you're aware, you have 15 minutes for your presentation. You can start by stating your names, and you can proceed when you're ready.

Mr. Ed Kennedy: I'm Ed Kennedy. I'm the president of the association. With me is Frank Ramagnano, who's my secretary-treasurer.

First, I'd like to thank the committee for this opportunity to address you regarding Bill 181, the Fire Protection and Prevention Amendment Act, 2011. This act addresses two legislative priorities of our organization, those being mandatory retirement for firefighters and the duty of fair representation.

The Toronto Professional Fire Fighters' Association represents approximately 3,000 professional full-time firefighters in the city of Toronto. Our members provide emergency service, training, prevention, inspection, public education, fire, emergency communications and vehicle maintenance. We are a local within the Ontario

Professional Fire Fighters Association and we are chartered through the International Association of Fire Fighters. We are the largest fire local in Canada and the fifth largest in North America.

Our position in regard to the duty of fair representation—for consistency, we are going to following the OPFFA order on topics. We will begin our presentation with the duty-of-fair representation, DFR, section of Bill 181. As has been stated, DFR makes up the majority of this legislation.

The Fire Protection and Prevention Act, 1997, FPPA, currently contains limited references to the Labour Relations Act. The FPPA is silent on the issue of duty of fair representation, DFR, which is common to most other unionized employees across Ontario.

On at least three occasions, we have had our firefighters apply to the Ontario Labour Relations Board only to find out that they have no jurisdiction to hear their DFR complaint. The only mechanism by which DFR complaints can be pursued by our firefighters is through civil courts. Pursuing such complaints through the courts can be very expensive and time-consuming to our members, the association and, at times, our employer. We have witnessed this occurring on two occasions. They were not successful and were either dismissed or withdrawn.

We're now seeing a trend where members are applying to the Ontario Human Rights Tribunal for complaints that are clearly DFR matters and should be within the jurisdiction of the OLRB. Disappointingly, the OHRT has accepted these cases and are conducting hearings. We have had a dozen HR complaints, and we believe that half of these complaints were as a result of members' perceived DFR issues.

The duty of fair representation can be summarized according to its principles as defined by the Supreme Court of Canada in the *C.M.S.G. v. Gagnon* case, 1984, and it's highlighted below.

I'm confident that our local representatives conduct themselves in a manner consistent with the above principles and we recognize that a proper disputes resolution mechanism is necessary to offer our members protection of their rights.

The Ontario Labour Relations Board was created as an expert body to deal with labour relations matters and has great depth of knowledge and experience dealing with DFR cases. We have witnessed issues arising from duty-of-fair representation claims proceeding through a forum that does not possess required expertise in the administration of collective agreements and union constitutions. Therefore, we have had to spend a considerable amount of time and resources to first ensure that the body hearing the case understands the laws we operate under.

Bill 181 addresses this concern by importing the OLRB process for dealing with DFR claims into the FPPA and has recognized any necessary modifications, i.e., trade union to bargaining agent etc. We recognize that moving to this process may increase claim volume for our association; however it will ultimately reduce our

financial burden associated with these claims under the current form. It will also provide a cost-effective method for our members to pursue a DFR issue they may perceive. It would offer the same protection to our members as other unionized workers across Ontario.

Bill 181 also calls for the implementation date of December 1, 2011, which allows our provincial body, the OPFFA, to appropriately educate our membership and local leadership on this new process.

In regards to mandatory retirement: During the government's abolition of mandatory retirement in 2005, the OPFFA, our parent body, sought an exemption allowing for mandatory retirement to still be applied to fire fighters, as defined in part IX of the Fire Protection and Prevention Act, at age 60. The government did not support this exemption and instead maintained a mandatory retirement provision where a bona fide occupational requirement, BFOR, exists. Prior to this legislative amendment in 2005, firefighters in Ontario either relied upon contract language, municipal bylaws or the previous language of the Human Rights Code, which allowed for mandatory retirement at age 65.

Our current contract language on mandatory retirement has been in place for many years and has withstood a human rights complaint in regards to it. It's highlighted below. I don't know if you want me to read through the contract language.

There have been four cases involving our local in Toronto—two hearings held together, and a settlement was reached outside of the board. One case went to the tribunal with the complaint not being upheld against ourselves and the City of Toronto. In the final decision, the complainant withdrew their case due to the Espey decision. You'll see the one that was not upheld down below. It's *John Nearing v. Toronto*. If you don't mind, I'd like to read that decision.

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"I do not understand the applicant's position to be that the duty to accommodate requires that he receive the same level of compensation he received in his operational position. If that were the case, logic would dictate that the top-up not be time-limited. Rather, his position appears to be that if such top-up is to be offered voluntarily, then it ought to be at the rate of the job he was primarily assigned to, not his lower-paid 'base' position. The applicant was unable to point to any theory of discrimination to support this position, but rather suggested that fairness dictated the result he sought. The tribunal does not, however, have the jurisdiction to inquire into the rightness or fairness of decisions in the absence of a violation of the code."

For those reasons, the application was dismissed on June 15, 2010.

In conclusion, the TPFFA strongly supports the passage of Bill 181 as it currently is before us. It supports collective bargaining, allowing the parties to address their local needs. Toronto, with its unique size and position, has addressed their own local need, and we are happy that the legislation recognizes that. It will signifi-

cantly reduce costly and unnecessary human rights tribunal processes for both mandatory retirement and DFR cases. The TPFFA strongly believes that this legislation reflects appropriate changes in dealing with these issues.

We'd like to thank you for the opportunity to be here.

The Chair (Mr. David Oraziotti): Thank you very much for your presentation. We have a few minutes for questions. Mr. Clark.

Mr. Steve Clark: Just on article 26 that's listed on page 3 or 4: You've got the 65 number for your group. How many are between 60 and 65 in the operations division?

Mr. Ed Kennedy: About 35.

Mr. Steve Clark: Later on today, the city is coming in. Have you had discussions with them since the private member's motion was tabled?

Mr. Ed Kennedy: Yes, we have. Well, we've had discussions with regard to the bill and what we felt about it. As far as my discussions, they were happy with it, with regard to supporting what we have currently in the collective agreement.

The Chair (Mr. David Oraziotti): Ms. DiNovo.

Ms. Cheri DiNovo: Thank you for your submission. Thank you for all that you do for the city of Toronto, by the way.

I have no problem; New Democrats are very supportive of this bill. You've heard the AMO submission, however. Do you have any comments on their concerns?

Mr. Ed Kennedy: One of the most important ones I find is in regard to how they felt this process would be more costly. I definitely disagree. Right now, with the number of cases that we have, our association and the city of Toronto, going to the Ontario Human Rights Commission—we have 12. There is one hearing that's coming up. I think right now we have six dates currently scheduled, and probably more, from it. We're going through one currently. I think in the first week of May, there were four dates we had for another individual, and we had a couple earlier in the year. Every one of these cases, for whatever reason, seems to take six-plus hearing dates, and that gets very costly to our membership. We have legal representation there.

Mr. Frank Ramagnano: One issue I would take exception with is the exemptions that they ask for in regard to DFR. In one of the cases that we had before us when we were in civil, they just named the association, but it was quite evident that if a mistake was made, it would be the city of Toronto that benefited from that mistake and not the association. We, in turn, named them as a third party. The judge wholeheartedly agreed that just because a mistake was made, there was no way that the city should benefit from that mistake. By having the exemptions that they're requesting in DFR legislation, that's exactly what they would be doing. If the association was found guilty of something, basically they're saying, "It's the association's fault and we're clear, and we don't have to pay what we normally should have if that mistake didn't occur."

It would also move us away from where the other unions and employers are. They have that protection. That's the legislation now. We're not asking for the labour relations legislation to get changed; we're asking for the fire prevention act to get changed.

Ms. Cheri DiNovo: It also seems to me that it's the right thing to do, even if it did cost more. It would be interesting to know if the government would step up and help out, because it's certainly worth paying, even if it did cost more.

I respectfully accept your submission. Thank you.

The Chair (Mr. David Oraziotti): Briefly, Mr. Berardinetti.

Mr. Lorenzo Berardinetti: Thank you, Mr. Kennedy and Mr. Ramagnano, for coming here today, on behalf of all our members here.

We were just talking about duty of fair representation. Is it possible it could save money on both sides, the new amendments that we're recommending here, that it could save on the association's side—

Mr. Ed Kennedy: Absolutely. With regard to what I've highlighted, the number of cases that we have at the Ontario Human Rights Commission—right now, the city is probably paying as much, or more, representing themselves there. So I can see, definitely, a big savings.

Mr. Frank Ramagnano: We actually believe the city of Toronto is contemplating suing the Human Rights Commission because they believe a lot of the cases should never be before it—they don't have jurisdiction over it—to the point that the city is bringing in their own stenographer to keep track of everything. So we believe that they might be, in the future, anticipating going after the Human Rights Commission on some of the cases that were there, as well.

The Chair (Mr. David Oraziotti): Thank you very much, gentlemen. That's the time for your presentation today. Thanks for coming in.

ONTARIO ASSOCIATION OF FIRE CHIEFS

The Chair (Mr. David Oraziotti): Our next presentation is from the Ontario Association of Fire Chiefs. Good afternoon, gentlemen, and welcome to the Standing Committee on General Government. As you are aware, you have 15 minutes for your presentation. Any time you don't use will be divided among the members. You can start when you're ready—and just state your name for our recording purposes.

Mr. Kevin Foster: Thank you, Mr. Chair. My name is Kevin Foster. I'm the first vice-president of the Ontario Association of Fire Chiefs and the director of fire services and emergency management for the town of Midland. I have with me today Barry Malmsten, who is the executive director for the OAFCh. We appreciate the opportunity to speak with you today.

The OAFCh represents chief fire officers from around the province who are responsible, by statute, for the delivery of fire protection services within their communities. The chiefs are not the employer; the respective municipality is the actual employer. We are the managers.

The OAFIC supports the principle of mandatory retirement that's contained in Bill 181. However, as currently presented, we believe that the proposal is incomplete and that it may create operational and financial challenges for municipalities.

There are over 460 departments in the province, employing over 30,500 firefighters. The structure and capabilities of each individual department will vary. You've had some information today in terms of departments. Over half of the departments in the province are entirely volunteer fire departments—and that includes the fire chief—of which the province has 50 departments within the northern fire protection program. Approximately 175 departments in the province are combination departments—a combination of career firefighters, part-time, as well as volunteers. Only 31 in the province are full-time or career departments that do not utilize volunteer firefighters.

As you can see, the fire service is very diverse, but the employment relationships between firefighters and the municipalities in which they serve are equally as diverse. There are career and part-time firefighters with a collective agreement under the FPPA; there are volunteer firefighters who have collective agreements under the Ontario Labour Relations Act; as well as career, part-time and volunteer firefighters who have no collective agreement at all.

When it comes to health and safety, all firefighters need to be treated the same. The Occupational Health and Safety Act and section 21 guidance notes do not offer one type of health and safety standard for a career firefighter and a separate standard for a volunteer firefighter. All firefighters are trained the same, according to the same provincial standard; they face the same dangers and they work side by side at incidents in composite departments as well as part of Ontario's mutual aid system.

We see this bill as discriminatory, as it proposes to differentiate between career firefighters covered by collective agreements established under part IX of the FPPA and all other firefighters. That means that it excludes approximately 65% of the firefighters in Ontario. Matters of health and safety should not apply only to one third of the workforce.

I refer back to my previous statement about career firefighters and volunteer firefighters working together at the same incident in a composite department or in a mutual aid system. Midland, my department, is one such example. At all major incidents, there are both career and volunteer firefighters present. Theoretically, let's just look at that. If, during the incident, one career firefighter and one volunteer firefighter were both to turn age 60, the intent of the legislation, as it's drafted, would be that the career firefighter should no longer be able to assist, but the volunteer firefighter should be able to continue.

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The health and safety of all firefighters is important. Therefore, we strongly recommend that the proposed legislation be expanded to provide the option of negotiating or establishing a retirement age for all firefighters,

not just those with collective agreements under the FPPA.

A bill which mandates a single retirement age for all fire departments may negatively impact public safety. Mandatory retirement at age 60 would have a large impact on some volunteer departments. It's estimated that 6% of the volunteer firefighters in Ontario are over age 60. In many smaller municipalities, these firefighters are the only people available during the day in order to respond to an emergency incident. In full-time departments, that number is approximately 1%. It still has an impact, but to a much smaller extent.

Let me give you an example of where one volunteer department sits in the province. The township of Otonabee-South Monaghan over the next five years will see 17.5% of its fire service forced out. That will include their fire chief, two district chiefs, one captain, fire prevention, training officer, two fire captains, as well as three firefighters.

From a position of managerial and supervisor responsibilities, the volunteer fire service would be significantly impacted, as 11% of officers are over 60, whereas 3% are over 60 in full-time departments. These are the leaders and the most experienced persons in the departments.

For this reason, the OAFIC recommends that the legislation be permissive, to allow for the establishment of a suitable retirement age. Allow municipalities to establish a retirement age, or not, that works for their local circumstances and for their firefighters, and they should not have a deemed mandatory requirement. Rather, reinstitute the validity of the applicable language that is currently included in existing collective agreements. Provide the ability to negotiate an acceptable age into a collective agreement, and when negotiation fails to reach an agreement, the matter can be dealt with through the arbitration process, like all other negotiable items which remain in dispute. Establish a suitable age requirement in a fire department establishing and regulating bylaw, or another suitable municipal bylaw, or a municipal policy, if a collective agreement is not present.

While all municipalities and career firefighters participate in the OMERS pension plan, not all have a normal retirement age of 60. The costs of converting existing firefighters to the NRA 60 will be significant, and the costs for municipalities to transition to the NRA 60 will significantly increase for each new firefighter.

One third of collective agreements do not have the mandatory retirement age in them. Bill 181, as drafted, would force all other municipalities to have a retirement age of 60. This could impose a huge cost on the municipalities and on firefighters. Such costs should be determined by the affected parties as part of the collective bargaining process and should not be forced upon them.

We're also concerned for future firefighters, because recruit firefighters are typically older today, in their late 20s and some even into their 40s, whereas years ago, when firefighters who are currently retiring at the age of 57 were hired, they were much younger, in their late teens or early 20s. New recruits today may not have full pensions by the time they are 60.

The duty of fair representation deals with the dispute between the bargaining agent and one of its members. This is not a collective agreement dispute between the union and the employer, and is a dispute outside the control of management. Although the OAFCA is not the employer, we believe that any costs of the remedy for a contravention should be borne between the union or the individual member and not the municipality.

We are concerned that the added costs of such an award on the employer could impact the flexibility that they have to finance enhancements of fire protection and fire department operations.

In operational terms, it is extremely difficult to define and categorize firefighters as suppression or non-suppression and as regularly assigned to such activities. The fire service has been designed to be flexible so that firefighters in other fire service roles, such as fire prevention, training and even chief officers, may be called upon to be an active contributor at an emergency scene.

Particularly in small composite departments, many individuals wear many hats. In Midland, for example, both our training officer and fire prevention officer have emergency incident responsibilities and, when off duty, do return to general alarms. Midland would be a norm for that type of department, not an exception. Small composite departments often use all their off-duty staff for major incidents.

The current wording will lead to continual disputes and costly arbitrations as firefighters, associations and municipalities debate who and what activities are regularly assigned. We recommend that the legislation be applicable to all firefighters.

Employers should be relieved from the requirements of duty to accommodate beyond the retirement age. Fire service personnel in Ontario are predominantly working in emergency response. There are few positions in a fire department that are not emergency-response related. The few that do exist typically require a very different skill set. This means that it is impossible for the fire department to accommodate a large number of retirees in their operations.

This clause, as worded, may create lifelong firefighters who are unable to perform tasks for which they were hired, meaning that taxpayers would be burdened with the cost of staff with little or no return for their tax dollars, and also limit the municipalities' flexibility in financing enhancements in fire protection, including additional or replacement personnel.

In closing, the Ontario Association of Fire Chiefs supports the intent of Bill 181 but maintains that the items noted need to be addressed in the interest of health and safety of all firefighters, municipalities and the public.

Thank you, Mr. Chair. I'll try to address any questions that you may have.

The Chair (Mr. David Oraziotti): Thank you very much for your presentation. We have a very brief minute or so here for questions. Mr. Clark, go ahead if you've got something.

Mr. Steve Clark: I guess I'm just a bit confused. You agree with the intent of 181, but you feel it's incomplete;

that there may be some operational and financial issues. I understand that.

Help me out. I was in a hall on Saturday, and I talked to some volunteers. A 68-year-old drives the truck to the scene during a fire during the day because, obviously, it's a small volunteer force. How are you saying that this is going to change the way that they deal with it? They've got 40 volunteers; six of them are over 60 years old. Give me your interpretation on how that's going to create an operational challenge to that particular municipality.

Mr. Kevin Foster: In our recommendation, if the legislation is permissive to permit the municipality to determine what is in the best interest for them in terms of providing fire protection services with those individuals. That's what our recommendation is.

Mr. Steve Clark: What if they determine that the way they operate now is the way they want to operate? How do you see that this is going to curtail them from doing that?

Mr. Kevin Foster: Sorry; how they operate now would curtail them?

Mr. Steve Clark: Yes. They have six people who are over 60 for a volunteer fire department. How do you see that this present legislation, the way it's worded, is going to curtail the fact that they operate with six firefighters over the age of 60 right now?

Mr. Kevin Foster: I think what the current legislation does is restrict the municipality from actually determining what is in the best interest of fire protection delivery for their municipality.

Mr. Steve Clark: So you're saying that they have to change the way they operate based on this legislation?

Mr. Kevin Foster: No, but what the legislation does is it actually does not permit them to make the change—keeping in mind that the intent is to deal with the health and safety matter if the health and safety matter of a career firefighter is the same as that of a volunteer firefighter. If that is the intent, then currently the municipality is not permissive to be able to address that concern, if they have that within their municipality.

Mr. Steve Clark: So if they were permitted to handle things the way they do now, you'd be supportive? If volunteer departments in municipalities could operate the way they are, if they were allowed to be permitted under permissive legislation, you'd support that?

Mr. Kevin Foster: Yes.

The Chair (Mr. David Oraziotti): Okay. That's the time for your presentation. Thanks for coming in today, gentlemen.

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FIRE FIGHTERS ASSOCIATION OF ONTARIO

The Chair (Mr. David Oraziotti): Next presentation: Fire Fighters Association of Ontario. Good afternoon, sir, and welcome to the Standing Committee on General Government. You have 15 minutes for your presentation. Any time you don't use will be divided among committee

members. You can start by stating your name, and you can go ahead. Thanks.

Mr. Dave Carruthers: Thank you, Mr. Chair. My name is Dave Carruthers. I'm currently the secretary of the Fire Fighters Association of Ontario. I'm pleased to address the committee this afternoon.

The Fire Fighters Association of Ontario is an organization that has its roots in this province dating back almost 112 years. From its inception, it has been the mandate of the FFAO to promote opinions regarding the best appliances for modes of firefighting and all other matters affecting the progress and welfare of volunteer firefighters in the province of Ontario.

Our executive has followed the progression of Bill 181 and has petitioned our membership for their thoughts on how this proposal will affect the average volunteer fire department in Ontario. Some of these comments are as follows:

"There are numerous fire departments in the north that are already suffering, and 'grey' hair is becoming more and more prevalent. Smaller communities would know the strengths and weaknesses of their members and would accommodate their needs. If people don't feel up to doing the job they will probably retire or find something else to do within the fire service.

"Let's remember the spirit of the volunteer fire service and the communities they serve."

That's from Rob Simpson.

"This if passed will be the end of our department. Because of our isolation and high unemployment it has been a nightmare for the past 10 years trying to maintain a minimum number of firefighters. Our experience is in our more senior volunteers, and they are all that keeps the department functioning.

"If we were to lose this expertise there is no telling what quality of service we could deliver.

"This would be coming at a very bad time when a lot of departments are also feeling the effects of low recruitment and retention."

That's from Mike Henderson.

"Competence and physical ability should be the criteria for setting a 'retirement' age for volunteer firefighters. Age should not be a consideration."

That's from Barry Baltessen.

"As an active member of a volunteer fire department for the last 19 years, I have been lucky to work beside our elders in the community. I see as a suppression responder the" proposed "retirement age is 60. I know that there are numerous members of other departments who are at this age or older and are still very active and fit. I have a policy within our department that there is a job for everyone and if the member is fit and can still do the job then they will continue unless otherwise noted. We expect a team effort and the newly trained younger firefighters will be more than willing to handle the suppression side of our core services. Having the experience of the veterans at any age is a benefit to our entire department. I believe that the member will know when their limitations are exceeded and they are more than happy to

step down at that time. I trust I am among many others who feel the same!"

That's from Andrew Peplinski.

"Age should not be the deciding factor. Level of physical fitness should be the deciding factor.

"A firefighter who is under the age of 60 and not in good physical condition is not only a hazard to himself but to his fellow firefighters. At this time there are young firefighters who, because of their physical fitness, should not have the job."

That's from Dennis Ainsley.

On a personal basis, as a recently retired chief with 32 years' service, I can assure you that there are very few volunteer firefighters who are regularly assigned suppression duties. This is due to many factors, including, but not limited to, fewer fires occurring each year; the time of day, with regard to those working out of town; shift workers; daycare requirements—even when the firefighter is at home and the call comes in, he may not have daycare for his children; and other volunteer duties within the community. My experience indicates to me that the majority of those in the volunteer fire service are well aware of their limitations. Most, if not all, will resign their position prior to reaching the point where they can no longer perform to an expected level of performance.

We ask that a retirement age be negotiable with each municipality, which is the actual employer. This would allow each municipality to determine its own level of service and the ability to utilize its staffing as they are needed.

I'd like to thank the committee for the opportunity to speak today. I've left copies of all the comments received from our various members, not all of which are totally against this legislation. At this time, I'd welcome any questions or comments that you may have.

The Chair (Mr. David Oraziotti): Thank you, Mr. Carruthers, for your presentation today. Ms. DiNovo, if you have any questions, you're up first.

Ms. Cheri DiNovo: Thank you, Mr. Carruthers, and thank you for your honesty. I just scanned through these letters, and there's quite a mixed bag here. I mean, there are a lot of people who are very much in favour of this legislation, and they're volunteer firefighters—there's one here I think I know, too. It says, "At age 60 you need to give your body rest and time to enjoy the next stage." One person says that he's definitely in favour of this legislation. So I thank you for including the range; you weren't selective. There's a lot of support for this legislation in these letters from your membership.

The other thing that I would like to say too is that of course we in the New Democratic Party are very concerned about volunteer firefighters, and their health and safety as well. I thank you for bringing their concerns forward to us.

The Chair (Mr. David Oraziotti): Thank you very much. Mr. Levac, go ahead.

Mr. Dave Levac: Hi, Dave. It's good to see you again. It's been a while, but good to see you, and dealing

with Bill Burns and Dave Thomson and the guys; I appreciate that.

I just wanted to make sure that I was clear on something. You can negotiate now with your municipalities in terms of anything in a collective agreement, should you have one. You're allowed to do that in negotiations. So collectively, the Fire Fighters Association of Ontario does not have a problem with the fact that they've been exempted from this legislation and that they're not being forced to retire at 60—but you still have the capacity to negotiate that in a collective agreement, correct?

Mr. Dave Carruthers: That's quite fair.

Mr. Dave Levac: So that's not a problem for the association nor the individual.

Mr. Dave Carruthers: Not as I see it, no.

Mr. Dave Levac: Right.

There's another piece of clarity I wanted to make sure that we came to, and that is that volunteer fire departments—and I don't have the actual statistics—probably have a more difficult time maintaining during the day anyone—if you decide to say, “Okay, everybody over 60, you're gone,” that would be a bigger problem for volunteer fire departments during the day than it would be for professional firefighters who are already hired, on-scene. They have that schedule in there, right?

Mr. Dave Carruthers: For the most part, that's very true. Other than shift workers who may be at home during the day, for the most part, with volunteer firefighters who are working during the day, we have found in the last 10 years that it is becoming more and more difficult for a volunteer firefighter to leave their place of permanent employment to attend to an emergency for two reasons: one, the employer does not like to see people taking off during the day and maybe or maybe not coming back, depending on the state of the emergency; and the second thing is that more and more firefighters, although they like to stay as local as possible, are travelling as much as an hour to an hour and a half away from home in order to obtain permanent, full-time employment, and therefore they are not available at all during the day.

Mr. Dave Levac: One last, final comment to support what Mr. Clark was asking of the previous deputant: The status quo as it is now for the volunteer fire department, through your perspective, would be acceptable?

Mr. Dave Carruthers: I believe so, yes.

Mr. Dave Levac: Thank you very much, Mr. Chairman.

The Chair (Mr. David Oraziotti): Mr. Clark or Ms. Savoline?

Mrs. Joyce Savoline: I just want to put it in a nutshell, because I think we're asking the same thing and getting slightly different wording for the answer. With this new legislation, what changes for the volunteer firefighter that you feel is not good?

Mr. Dave Carruthers: If everything applied across the board to every firefighter in this province, it would devastate a number of the more northern fire departments in the province. Many of them are comprised of volun-

teers, 50 years-plus, and if you took 50% of their members away because they were over the age of 60, it would devastate that municipality's ability to respond to emergency situations.

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Mrs. Joyce Savoline: Thank you.

The Chair (Mr. David Oraziotti): Thank you very much. Mr. Clark, do you have anything further?

Mr. Steve Clark: No, that's good.

The Chair (Mr. David Oraziotti): Thank you very much for your presentation. We appreciate you coming in today.

MISSISSAUGA FIRE FIGHTERS ASSOCIATION, IAFF LOCAL 1212

The Chair (Mr. David Oraziotti): The Mississauga Fire Fighters Association: Good afternoon, folks. Welcome to the Standing Committee on General Government. As you know, you have 15 minutes for your presentation. Whoever may be speaking, just state your name before you begin and you can start when you're ready. Thanks.

Mr. Chris Varcoe: My name is Chris Varcoe, and I'm president of the Mississauga Fire Fighters Association. It is my pleasure to be joining you all here today to speak to Bill 181, the Fire Protection and Prevention Amendment Act, 2011. I'm joined here today by, on my right, secretary Mark Train of Local 1212 in Mississauga, and vice-president Ryan Coburn on my left.

The Mississauga Fire Fighters Association represents some 700 members. We provide fire protective services to the nearly 750,000 residents in Canada's sixth-largest city. Our members are responsible for fire suppression, fire prevention, public education, training, mechanical operations, emergency communications and clerical.

We wish to thank the committee for allowing us the opportunity to address you today. This bill addresses two significant issues for professional firefighters in Ontario and within our home local, Mississauga.

I'll speak to the mandatory retirement portion of the bill first. This portion of the bill has certainly generated the most discussion, both in the Legislature and the fire halls. This has been a legislative priority of the OPFFA for several years now, and we are pleased that this bill has come forward to address our concerns.

For virtually the entire history of the Mississauga Fire Fighters Association, the retirement age has been 60. This was always clear to our members, and although for decades it did not exist in the collective agreement, it was considered the expected practice and referenced in the department's own policies and procedures.

Approximately five years ago, a member approached the city wishing to stay beyond his 60th birthday. This was subsequently approved, and since then, there have continued to be sporadic requests to extend. The association has always been opposed to this, but has lacked the collective agreement language to challenge the practice.

We were recently successful in negotiating the language into our collective agreement and are working to ensure that our members retire from suppression activities at the appropriate age of 60. We have carefully examined this issue and strongly believe that this bill strikes an appropriate balance to ensure fair treatment for all firefighters, the citizens of Mississauga and the province as a whole.

We have considered several sources of reference to reinforce our position, including, but not limited to, the Ontario Human Rights Tribunal case of *Espey v. London* and the medical evidence introduced therein, as well as the IAFF-IAFC peer fitness trainer reference manual, second edition, 2008. Further anecdotal evidence has also been relied upon.

The concept of firefighters leaving suppression duties at age 60 is rooted in medical consideration and public safety. It has been determined that the propensity to have a cardiac event increases dramatically at age 60 as a result of the tasks required to be performed on the fire ground or during training exercises. This includes the physical demands as well as the emotional and mental stresses placed on those on scene and in command positions.

We have quotes taken from the IAFF-IAFC peer fitness trainer reference manual that cite some bullet points:

“Emergency firefighting duties have been found to be associated with a risk of death from coronary heart disease that was markedly higher than the risk associated with non-emergency duties.

“Measurements of heart rate response taken during normal firefighting tasks have been shown to be at, or near, maximal levels.

“The cardiovascular strain resulting from the performance of work at this high level of intensity is profound.”

In *Espey v. London*, substantial expert medical evidence was received that fully supports the position of requiring firefighters to retire from suppression duties at age 60. OHRT Vice-Chair David Wright noted in his decision that the medical evidence demonstrated that firefighters were in fact unique, in that a medical emergency sustained on the fire ground had impact on more than just the firefighter, him or herself. In fact, if a medical emergency or cardiac event were to occur, it would directly impact other firefighters and reduce the department's ability to continue with their primary assignment, as the operational objective would then adjust to focus on rescuing the firefighter. This would have the effect of placing the other firefighters in jeopardy and expose the public to undue loss as firefighting operations would cease and a rescue operation would commence.

Part 77 of the *Espey* decision states:

“Suppression firefighters’ work, including that of incident commanders, is dangerous and critical for public safety. It requires speed, quick reaction, endurance, and causes physical and mental stress.... A firefighter’s heart attack, angina, stroke, or ruptured aortic aneurysm will have significant effects on the ability of the fire service to

deal with emergencies as required, in addition to serious consequences for the firefighter involved and his or her colleagues. A cardiac event while a firefighter is carrying out emergency duties may have disastrous health and safety consequences. I am prepared to accept, as was the board of inquiry in *Hope*, supra, at paras. 36063-36064, that the consequences of cardiac events make it reasonable for the respondents to ‘insist that firefighters not be in the position of having a substantial risk of a cardiac event.’”

Also noted is the fact that incident commanders, should they become incapacitated, would have this effect as well, jeopardizing the health and safety of those on scene.

As with all departments, in Mississauga firefighter safety is paramount, even in the dangerous environments where we often find ourselves. Considerable time and effort is afforded to building in safety protocols to firefighting operations. From rapid intervention teams to safety officers to advanced entry control measures, safety is a number one priority. In Mississauga, our own policies and procedures reflect this. In our incident management system policy, four tactical priorities are identified that define the operational priorities for fire ground officers and assigns them the responsibility to accomplish these tasks. It is clear that firefighter safety is the primary focus.

The four tactical priorities that we operate by are:

- (1) protect, remove and provide care to endangered customers;
- (2) stabilize the incident;
- (3) conserve property and the environment during and after incident operations; and
- (4) provide for short-term services that stabilize and begin to normalize the customers’ lives.

Note that while it’s not in the four listed, firefighter safety is ongoing and always the primary responsibility of the IC and the supervisors.

Our association believes that the public deserves to be protected by a fire department that will do everything in its ability to ensure those responding are most capable of delivering their services safely. To ignore medical evidence that demonstrates serious risk would be difficult to justify if something were to go wrong. We recognize that any person at any age can sustain some form of medical emergency or cardiac event. However, the evidence presented does make a compelling case that, statistically speaking, the chance of this occurring becomes significantly greater after the age of 60.

The decision also pointed to the fact that the increase in risk for a cardiac disease increased significantly with age. In *Espey*, it was found that “The evidence in this case, however, is clear that age is a very significant contributor to risk of cardiac events, in general, among firefighters, and among officers. It is clear that there is a significantly increased risk of cardiac disease around the age of 60, in both men and women, and that this continues to increase with age.” We have a “furthermore” quote that you can follow as well.

In Mississauga, the possibility of physical testing has been raised by the employer and rejected by the association. The corporation had proposed to introduce some form of physical testing that would be acceptable to all parties. It would identify if the individual met a set point standard to remain in the capacity of suppression activities past age 60. This has been subsequently examined and determined to not be valid. The Espey decision clearly indicates that while some form of medical testing exists that would assist in determining the risk factor for cardiac events in those over the age of 60, it has not been determined how this testing would apply to firefighters. The next quote excerpted from the decision outlines that portion of the argument.

In summary, the passage of this bill would have the effect to clearly establish through legislation the mandatory retirement age of firefighters in the province for our association and for others across the province. It will avoid the excessive costs of defending our collective agreement on a case-by-case basis in front of the Ontario Human Rights Tribunal and be decisive in enforcing what currently exists in the vast majority of collective agreements in the province.

We believe this represents good public safety policy and will ultimately reduce the burden of WSIB obligations for the employers by removing firefighters from an environment that exposes them to toxic atmospheres and increased risk for cardiac events due to the nature of firefighting.

The DFR portion of the bill, the duty of fair representation, has received little debate anywhere, from in the fire halls to in the Legislature itself. I've often been asked several questions from different members of provincial Parliament, their staff and municipal politicians as to why the OPFFA and our associations would be asking for this type of scrutiny.

When the FPPA was enacted in 1997, the act provided little reference to the Labour Relations Act and remained silent on the DFR. It should be noted that access to the Ontario Labour Relations Board is common to most other unionized employees in the province.

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In Mississauga, we had a firefighter appeal to the OLRB to challenge the representation he received and was denied on the basis of being a firefighter. This resulted in him subsequently appealing to the OHRT to have his concerns heard. This was costly, time-consuming and ultimately a misuse of that body's time. It was ultimately dismissed.

Another recent example was a member who felt his interests were not being represented properly, and he, too, opted to proceed. In this instance, he proceeded civilly against the local. This case was abandoned at the discovery stage, but still, costs were excessive for the local to defend itself and also for the individual.

When we consider the effect of our members not having access to the OLRB, often cost, time and an appropriate venue are at the top of our concerns. In our own situation, we are fortunate to have a large member-

ship and can therefore, to some degree, absorb the cost of being challenged either civilly or at the OHRT. This is not the case for smaller locals.

Mississauga is the third-largest local in the province. Should a smaller local be challenged, a much smaller membership would be forced to shoulder the load of defending the allegations. The costs are often the same, whether spread over the 700 members in Mississauga or a dozen members of a small local.

We recognize the OLRB as an expert body designed to deal with these issues as a result of its significant understanding of the Ontario Labour Relations Act and its experience in the labour relations environment. We further recognize that there may be more challenges to the DFR brought forward in the early days of this legislation; however, they will be dealt with in a quicker and far less costly manner. This provision allows firefighters to access a provincial board, similar to other unionized workers across the province.

In closing, the Mississauga Fire Fighters Association strongly supports the passage of Bill 181. It will provide a consistent framework to guide municipalities around the mandatory retirement age while still permitting the collective bargaining process to continue in locals that lack the language. The DFR language will permit a cost-effective method to firefighters who wish to challenge the representation they have received. Both of these measures are important to all professional firefighters and represent good public policy.

We are encouraged by the all-party unanimous support that this has received to date and we thank the government for introducing this bill.

Thank you very much for the opportunity. I'd be pleased to answer any questions you may have.

The Chair (Mr. David Oraziotti): Thank you very much for your presentation. Ms. DiNovo, go ahead.

Ms. Cheri DiNovo: Thank you very much for your presentation. As you've heard before, we're in support as well.

I just wanted to ask—and again, I'm getting you to do our work for us a little bit here, but you've heard some concerns raised about the municipalities' concerns. I think we've dealt with the cost a bit, but perhaps you could say a few words about those volunteer firefighting departments out there and the impact upon them. We've heard from deputants on that.

Mr. Chris Varcoe: I'm not exactly sure. I'm not quite sure what they're asking for in the legislation, how the proposed legislation would appear that they're not included—they're asking not to be—and the explanation of the devastation that would occur if they were actually included. So I'm not entirely clear as to what's being asked.

Ms. Cheri DiNovo: Right—in terms of their protection, I guess, and the cost envisioned.

Again, I just thank you for the good work that you do. With any hope at all, we'll get this passed this session.

Perhaps you could also say a few words about AMO and their concerns about cost.

Mr. Chris Varcoe: Certainly. From our position, we believe that, as far as the mandatory 60, costs will be reduced for the cities. As mentioned earlier, when people leave at age 60, younger employees are hired to take their place. They begin at a lower wage, with lower vacation entitlement and whatnot. As well, there will be less exposure to the toxins in the environment that can cause illnesses down the road. Stress and the physical demands as well can limit the burden to the municipalities.

Ms. Cheri DiNovo: Okay. Thank you very much.

Mr. Chris Varcoe: You're welcome.

The Chair (Mr. David Oraziotti): Thank you very much. That's time for your presentation. We appreciate you coming in today.

CITY OF TORONTO

The Chair (Mr. David Oraziotti): Our next presentation is the city of Toronto. Good afternoon, folks. Welcome to the Standing Committee on General Government. As you are aware, you've got 15 minutes. Whoever may be speaking, just state your name for recording purposes, and you can begin when you're ready.

Mr. Darragh Meagher: Good afternoon. My name is Darragh Meagher. I'm director of employment law with the city of Toronto. I'm joined by Daryl Fuglerud, deputy fire chief, Toronto Fire Services; and Michael Wiseman, manager of benefits and employee services for the city of Toronto. I'm pleased to be able to provide the city of Toronto's perspective on Bill 181 this afternoon.

First, I'd like to provide you with a brief summary of the composition of the Toronto Fire Services so that you'll understand the potential impacts of the legislation for TFS. TFS has approximately 3,200 employees, of which approximately 3,100 are considered firefighters under the FPPA. Approximately 2,800 of those firefighters are assigned to operations or suppression service duties. There are approximately 200 firefighters who are assigned to support services and may be assigned to attend fire scenes in the course of their duties or may be involved in training activities.

The city of Toronto is largely supportive of the principle of mandatory retirement for suppression firefighters and of the principle of duty of fair representation being addressed through the legislation. However, there are some concerns that we'd like to bring to the attention of the standing committee regarding the manner in which these principles are addressed in the legislation. To some extent, I think the concerns that you're going to hear from us will echo the concerns that you've heard from AMO already today.

In relation to the issue of mandatory retirement, the city of Toronto and the bargaining unit representing its firefighters, the Toronto Professional Fire Fighters' Association, spent a great deal of time dealing with that particular issue and have been able to negotiate a provision of the collective agreement that we believe meets the needs of both parties in that regard. In a nutshell, the city and Local 3888 have agreed that the essential duties of

firefighters in suppression are such that there's a significant risk that an employee will be unable to perform those duties past the age of 65 and that employees who are in a position in that division should be required to retire at that age. The parties specifically acknowledge through their collective agreement that this requirement was a reasonable and bona fide qualification due to the nature of the employment. So we've established an age in our collective agreement.

In addition, though, the collective agreement also addresses the accommodation of firefighters who want to work past that age, by providing that, in the event an individual wants to continue to work past age 65, the city will reassign the employee to a position outside of the suppression role, firstly to a comparable position in another division of the fire services in accordance with the requirements of the code. So we've attempted to establish an age and, as well, to deal with the individual who wants to continue working past that age.

The city's concern is the impact that the proposed legislation may have on its fire services. Specifically, there's a concern that the legislation may give rise to undue pressures on both the city and Local 3888, the TPFPA, in bargaining. The TPFPA may perceive that they have to achieve a mandatory retirement age of 60 through bargaining and that it will be difficult for interest arbitrators, who ultimately have the say if the parties aren't able to come to agreement, to withhold such a provision from collective bargaining through interest arbitration.

Adopting a mandatory retirement age of 60 in the city of Toronto would give rise to some significant challenges if fire services wouldn't have the capacity to place affected employees in non-suppression duties. The implications of such a change for the city would be significant. At present, there are approximately 90 employees in the suppression role who may be required to retire if such a provision was incorporated into the collective agreement between the city and Local 3888. Alternatively, the city could potentially grandparent those employees over 60 and implement mandatory retirement on a go-forward basis. However, both of those circumstances would give rise to implementation issues.

Introduction of a mandatory retirement age at 60 would put the city in a situation somewhat similar to the one that it was in post-amalgamation, at which time the composite collective agreements that governed its employees from various pre-amalgamation municipalities had different retirement ages, so the potential would be that you would end up with employees at different ages performing the same duties side by side but subject to different mandatory retirement ages. For an employer who is subject to the duty of accommodation under the Human Rights Code or this proposed legislation, that situation is of significant concern, and that's the situation that the city was successful in resolving through collective bargaining with its partner, Local 3888.

In terms of the specifics of the legislation, the city has some concerns with the manner in which the legislation

provides that it would apply. By virtue of the inclusion of this provision in part IX of the FPPA, it won't apply to managers or those firefighters who've been designated under subsection 54(4) of the act, both of whom are excluded from the bargaining units and not subject to a collective agreement. But subsection 53.1(1) provides that it will apply to firefighters who are regularly assigned to fire suppression duties, and that definition is somewhat problematic. It doesn't provide sufficient guidance, in the city's view, as to how the legislation would apply to firefighters in support divisions who may regularly attend a fire scene or who regularly are assigned to train firefighters. The city's concern is that the legislation may give rise to different interpretations and disputes which will result in litigation.

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Firefighters in non-suppression functions also attend the fire ground. It's not clear at this stage whether the proposed legislative change is intended to be limited to firefighters employed in performance of suppression duties or whether it's intended to apply to all firefighters. Without clarification, the legislation might be interpreted as unintentionally including those individuals, which would potentially include mechanics, fire prevention staff, health and safety staff etc.

In order to address the concern, the city would propose a minor amendment to section 53.1 which would provide that the legislation would apply not to firefighters who are regularly assigned to fire suppression duties but to firefighters who are directly engaged in fire suppression duties, including training related to those duties. We think that that clarification would provide greater clarity as to what the intention was.

As far as the duty to accommodate is concerned, section 53.1(4) contemplates that an employer is required to accommodate those employees who don't wish to retire, regardless of age. The current wording requires that the employer "shall not require the firefighter to retire if the employer can accommodate the firefighter without undue hardship...." I understand that you've heard from AMO, and as well, I understand Mr. LeBlanc had some comments that I think the city would be generally supportive of in relation to that issue.

One issue that I would raise, though, is that the workplace parties in the legislation, as I understand it, would continue to be subject to the provisions of the Human Rights Code, and there's a fair amount of jurisprudence as to what the duty to accommodate means in the context of the application of that legislation. I don't imagine that anybody is suggesting that those same duties wouldn't apply to those parties who are applying this legislation. One concern may be that if this legislation carries forward with a further duty to accommodate, people who are subsequently trying to address the application of the legislation may perceive that there is some further duty of accommodation that exists under this legislation, beyond what's contemplated by the Human Rights Code. It may be sufficient to simply leave the duty to accommodate questions to what already exists under the Human Rights Code.

As far as the duty of fair representation is concerned, there are favourable elements to that proposal. The duty of fair representation gives employees the right to challenge their union if the union fails to advance a grievance to arbitration that they believe has merit. The grievance continues, for the most part, to be owned by the union or the association, and it's not required to take all grievances to arbitration. The duty of fair representation as proposed would provide a framework through which an employee could seek review of their association's decisions in that regard, and that's the advice that we provided ministry staff when we were consulted in relation to this proposal.

We have one concern with the language of the actual bill, as it's proposed, and that relates to section 46.2(5)(d). It's one of the remedy provisions that provides that the remedy for an employee who is terminated and whose association breaches the duty of fair representation would be—that the board might direct reinstatement. In the city's view, the remedy for an employee in that situation is that the association should be directed to bring the grievance forward to arbitration. An arbitrator would then conduct a full hearing and determine whether reinstatement was appropriate. The workplace parties, and not the government, would bear the costs associated with the hearing, because the parties pay for an arbitrator, whereas if the matter was dealt with at the board it would be the board that would conduct the hearing. That's presumably consistent with the actual intent of the government, I would submit, in proposing this amendment.

As an alternative, the city would propose that if there wasn't a will to delete section 46.2(5)(d), that it be amended in order to make it clear that whatever remedy the board would apply as a means of addressing the contravention of the duty of fair representation would be what was necessary in order to remedy the breach. So rather than providing that in section 46.2(5), "The board shall determine what, if anything, the bargaining agent, the employer or any other person shall do or refrain from doing with respect to the contravention," the legislation would provide that the board shall determine what actions, if any, the bargaining agent, the employer or any other person is required to take or refrain from taking to remedy the contravention. In the city's submission, that change would direct the board to only reinstate where it would be required in order to remedy the contravention, and presumably, that would be a rare occurrence.

Thank you again for the opportunity to make submissions to you in relation to this matter. If you have any questions, I'm happy to attempt to address them.

The Chair (Mr. David Oraziotti): Thanks. We have a few minutes. Thank you for your presentation. Mr. Levac, go ahead.

Mr. Dave Levac: First, thank you for your presentation. I can assure you that there are plenty of staff, and the parliamentary assistant is sitting right here, so the recommendations and concerns you raised will be evaluated for sure.

Two things I'd like to talk to you about: You had given me the numbers of suppression. By a quick cal-

culatation, about 400 to 425 positions are available for somebody to accommodate to. During natural attrition, there would be some spaces available for people to move into. Are you presenting us with the worst-case scenarios when you talk about the collective agreements, the 65—like, you're making assumptions? Are you going to the worst-case scenarios when you make those assumptions, when you present to the ministry here, so that they understand that if all else was really bad, this is what would happen? I'm getting a sense that the legislation says that you carry on doing what you're doing right now. Because of the way it's written, your collective agreement is sacrosanct.

Mr. Darragh Meagher: Yes.

Mr. Dave Levac: I just needed to make sure I understand that.

Mr. Darragh Meagher: What we're saying is that if we were to try and accommodate this change through our collective bargaining process now—I'm simply trying to give a sense of the scale at which the city would have to try and accommodate employees who would require a move from suppression. Presumably—

Mr. Dave Levac: Right. But the numbers are there, right?

Mr. Darragh Meagher: The numbers are there, yes.

Mr. Dave Levac: Okay.

The Chair (Mr. David Orazietti): Thank you. We're going to move on. Ms. Savoline, go ahead.

Mrs. Joyce Savoline: In addition to what I'm understanding to be some administrative glitches and some issues that way, have you done any costing as to what

this might cost your municipality? Obviously, it would be an estimate, but I'm just trying to get a sense of what this may cost the property taxpayer.

Mr. Darragh Meagher: I don't think we've had the opportunity at this point in time to undertake any costing as to the impact.

Mrs. Joyce Savoline: Is it safe to say it will be a cost?

Mr. Darragh Meagher: Again, any change that would give rise to this, as I understand it, would arise as a consequence of the collective bargaining process. How the parties were to implement that change would, through that process, be within their control. It's possible that they might, in that process, address the cost concerns. I think, frankly, it's undeniable that they'll have to.

As far as implementing a change like this, I don't know that it's absolutely necessary that it will give rise to a cost. If one is going to move mandatory retirement in suppression in the city of Toronto from 65 to 60, I think there are likely to be some costs associated with that.

But, again, one thing that I think is positive in the legislation is that it does leave that process to the parties through collective bargaining.

Mrs. Joyce Savoline: Thank you.

The Chair (Mr. David Orazietti): Thank you very much for coming in today. That's time for your presentation.

Mr. Darragh Meagher: Thank you.

The Chair (Mr. David Orazietti): Thank you, folks. That's all the presentations today. Committee is adjourned.

The committee adjourned at 1538.

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Official Report of Debates (Hansard)

Wednesday 18 May 2011

Journal des débats (Hansard)

Mercredi 18 mai 2011



Standing Committee on General Government

Fire Protection and Prevention
Amendment Act, 2011

Comité permanent des affaires gouvernementales

Loi de 2011 modifiant
la Loi sur la prévention
et la protection contre l'incendie

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Wednesday 18 May 2011

Mercredi 18 mai 2011

*The committee met at 1603 in room 228.*FIRE PROTECTION AND PREVENTION
AMENDMENT ACT, 2011LOI DE 2011 MODIFIANT
LA LOI SUR LA PRÉVENTION
ET LA PROTECTION CONTRE L'INCENDIE

Consideration of Bill 181, An Act to amend the Fire Protection and Prevention Act, 1997 / Projet de loi 181, Loi modifiant la Loi de 1997 sur la prévention et la protection contre l'incendie.

The Chair (Mr. David Oraziotti): Good afternoon, everyone. Welcome to the Standing Committee on General Government. We're here to deal with clause-by-clause with respect to Bill 181.

Are there any introductory comments that anyone might have? Okay, seeing none, we'll move right to the sections in the bill.

Shall section 1 carry? That section is carried.

Section 2, government motion 1: Mr. Berardinetti, go ahead.

Mr. Lorenzo Berardinetti: I move that subsection 53.1(3) of the act, as set out in section 2 of the bill, be amended by striking out "section 1" and substituting "section 2".

The Chair (Mr. David Oraziotti): Any further comments?

Mr. Lorenzo Berardinetti: Housekeeping: a more technical amendment.

The Chair (Mr. David Oraziotti): Okay. Any further comments? Government motion 1: All those in favour? Opposed? Carried.

Government motion 2: Mr. Berardinetti.

Mr. Lorenzo Berardinetti: I move that subsection 53.1(4) of the act, as set out in section 2 of the bill, be struck out and the following substituted:

"Reasonable accommodation

"(4) A firefighter shall not be required to retire if the firefighter can be accommodated without undue hardship, considering the cost, outside sources of funding, if any, and health and safety requirements, if any."

The Chair (Mr. David Oraziotti): Any further comments? All those in favour? Opposed? That's carried. Shall section 2, as amended, carry? Carried.

There are no amendments to sections 3 to 6. Shall those sections—3, through and including 6—carry? Carried.

Shall the title of the bill carry? Carried.

Shall Bill 181, as amended, carry? Carried.

Shall I report the bill to the House, as amended? Carried.

Okay, thank you. The committee's adjourned.

The committee adjourned at 1606.

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